

## **IR35 Guidance for Schools**

Workers hired directly via an agency or directly by your school from any other 3<sup>rd</sup> party such as a personal service limited company, umbrella company, sole trader (self-employed) or partnership.

### **Introduction**

Schools receive their income by way of grants and discharge their responsibilities by payments either via payroll or through their accounts payable systems typically SIMS FMS. The regulations being discussed here do not apply to payments to employees via payroll but refer to payments made to individuals or organizations via BACS or cheques etc.

The regulations apply to payments to agencies, self employed individuals, individuals providing services via their own limited companies and workers engaged through a commercial company. They do not apply to the purchase of goods.

### **Background**

There is no formal definition of “Self-Employment”, tax regulations give examples of “Employment” and suggest various ways in which “Trade” may be identified. There are also many legal precedents, which suggest circumstances whereby a worker is classed either as an employee or as a self-employed contractor. But whether someone is self-employed or not, is a matter of fact, not opinion. Just because a person claims to be self-employed, does not necessarily make it true!

The following are NOT prima facie evidence of self-employment:

- Letter headed invoices
- A legitimate VAT registration certificate/VAT number
- A trading name including a company name (e.g. Ltd)
- Public Liability Insurance.

In principle, and subject to some restrictions, anybody can set themselves up as a business and commence trading, issue invoices and consequently receive payments that have not had deductions for income tax or NIC.

In the past, plumbers, electricians, market traders etc. were easily identified as self employed as were professional people such as solicitors, architects, accountants etc. But as the commercial world has become more competitive, a growing number of organizations and individuals have attempted to reduce their liabilities for income tax and National Insurance Contributions (NICs) by reclassifying themselves (Or their workers) as “Self-employed”, or by working through their own limited companies even though they were essentially employees in all but name. This is tax-avoidance which is legal not tax-evasion, which is illegal.

Because of the extent of these activities and the effect they have on reducing the amount of tax collected, the UK government has sought to make it much more difficult for individuals to operate in this way and the regulations are known as “IR35”.

Initially when introduced in 1999, it was thought that many workers who were trying to designate themselves as self employed would be found in fact, to be employed and therefore subject to the usual PAYE system used by employers. However, it is felt that there is still considerable non-

compliance and therefore, the regulations have been changed (at least in the Public Sector) so that it is the engager's responsibility to determine whether an engagement is either "Inside IR35" or "Outside IR35".

### **Applying the IR35 Regulations**

Since 6<sup>th</sup> April 2017, it has been the end client's (i.e. the school's) responsibility to determine the status of a worker as either "Inside" IR35 or "Outside" IR35.

"Inside IR35" means that the worker is essentially to be treated as an employee as regards deductions for income tax and NICs. If the worker is being supplied via his/her own company (Personal Service Company or PSC), that is ignored, and deductions are still made. (This aspect means that there is now no point in operating via a personal service company so most individuals who were using this method have abandoned it)

Workers falling inside IR35 must have PAYE Tax/NI deducted from all payments. This must be done by the body which is closest to directly paying the worker, which would either be the employment agency (if the worker has been hired via an agency), or an umbrella company (if the worker has been hired via an umbrella company), or your school if no agency or umbrella company is involved.

As it can actually be quite difficult to determine a person's employment status, HMRC have produced an online tool for this purpose. The online tool assists anyone wishing to check the employment status of an off-payroll worker for tax/NI, using the following link:

<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

The online tool is anonymous and can be used by the end user of the service, by the worker providing the service, or by an agency. It can be used before the engagement starts or after it has started, but preferably before the engagement starts. Always remember that legally the responsibility for deciding if the worker falls within IR35 rests with your school. You should limit authorisation of engagements that are assessed as outside of IR35 to one or two senior staff members, e.g. bursar, or Headteacher acting under advice from the bursar. This will ensure a controlled procedure exists in your school with consistent outcomes.

Although contractors impacted by this measure may have to pay tax in a similar way to an employee, their employment status will not change, so they will not receive the rights and benefits that go with employment such as pension contributions, holiday pay and unfair dismissal rights.

### **Workers Falling Within the IR35 Regulations**

Please remember that it is the school's responsibility to determine the employment status of the worker. The default position should be that the engagement falls within the IR35 regulations.

The following workers automatically fall within the regulations i.e. inside IR35, so no assessment is required – they are subject to the IR35 rules (this list is not exhaustive):

- 1) Supply teachers
- 2) Teaching assistants
- 3) Lab/ICT technicians working under direction of the departmental head or similar
- 4) Office workers engaged on administrative duties

- 5) Caretaking and cleaning staff
- 6) Workers engaged to cover for a permanent employee/post or for a fixed-term employee/post of the school

Workers falling inside IR35 such as those listed above must have PAYE Tax/NIC deducted from all payments. This must be done by the body closest to directly paying the worker, which would be the employment agency, an umbrella company or the school if no agency or umbrella company is involved.

You may carry out an IR35 assessment for the worker, but we would expect the result to confirm that **“The intermediaries legislation applies to this engagement”** and therefore that the engagement should be classed as **“Employed for tax purposes”**, meaning that PAYE tax and NICs must be deducted from all “Deemed employment” payments.

### **Using the Online Employment Status Checking Tool**

Once you have determined that an IR35 assessment is necessary (i.e. the worker is not automatically within the regulations), you should carry out the assessment by using the online employment checking tool.

<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

We recommend that you gather up all the information needed to complete the assessment beforehand. You should answer all the questions honestly, without trying to bias towards any particular outcome. HMRC will uphold assessments undertaken in this way even if in the end, the assessment turns out to be incorrect. Employment law is extremely complex and occasionally, determination of IR35 status can turn on slight nuances of the exact arrangement between the school and the worker. Therefore, it is very important to ensure that the details of the engagement are accurately recorded with care.

The details you will require include:

- 1) The contractual basis upon which the worker is engaged
- 2) The worker’s duties and responsibilities
- 3) Who decides what work needs doing
- 4) Who decides when, where and how the work is done
- 5) How the worker will be paid
- 6) If the worker can use a substitute worker for all or part of the work and if so, who pays the substitute
- 7) If the engagement includes any benefits or reimbursement for expenses

The questions asked vary in accordance with your answers so do not be surprised if the pages presented are not the same each time you use the tool.

Results from the HMRC tool will be one of the following:

- 1) **“This engagement should be classed as employed for tax purposes”** – the worker is performing the role of an employee and therefore all payments must be subject to PAYE Tax/NI deduction.
- 2) **“The intermediaries legislation applies to this engagement”** – all payments must be subject to PAYE Tax/NI deduction.

- 3) **“The intermediaries legislation does not apply to this engagement”** – All payments can be paid to the invoicing body without the deduction of PAYE Tax/NI in the normal way via cheque, BACS etc.
- 4) **“This engagement should be classed as self-employed for tax purposes”** – All payments can be paid to the invoicing body without the deduction of PAYE Tax/NI.
- 5) **“Unable to determine the tax status of this engagement”** – in this situation, the information recorded on the online assessment tool is insufficiently clear for HMRC to provide an immediate result. Further information is displayed on the results page which advises you to contact HMRC’s IR35 helpline by phone or email so they can provide you with a definitive outcome.

The final part of the IR35 online assessment allows you to print a copy for your records, which should be kept by you with other documents for the worker such as DBS check, contract for services, copies of certificates etc.

### **Penalties for Non-Compliance**

There can be significant consequences if you ignore IR35 legislation. Interest and penalties can be charged on any extra tax and National Insurance contributions that are owed. Penalties can be more severe if it can be proved that IR35 rules or legislation have been deliberately ignored.

The legislation puts the burden of responsibility on the entity that pays the contractor. The client is statutorily obliged to provide an answer in writing to the worker within 31 days of their IR35 status.

### **Conclusion**

The IR35 regulations exist to prevent circumvention of the PAYE regulations. Provided you make use of the HMRC test for self-employment and answer the questions accurately and honestly to the best of your knowledge and ability, you should not have any problems.