

## IR35 – myth buster FAQs

**1) Who is the fee-payer?**

The fee-payer is usually a public authority or agency that pays an individual's intermediary.

**2) When does the off-payroll apply to private sector?**

The rules will apply only to payments made for services provided on or after 6 April 2020. Any payments made after 6 April 2020 which is related to the services provided before this date will not be subject to off-payroll rules.

If a client concludes that Chapter 10 applies to an engagement the deemed employer is responsible for deducting tax and NICs from deemed payments and paying these to HMRC. The individual should be added to the deemed employer's payroll.

If workers are engaged directly, i.e. no PSC, then it is the engagers' responsibility to check the employment status and tax position of those workers.

**3) What is the exact definition of a PSC & how do we determine whether a sub-contractor is a PSC or a genuine trading company?**

The rules for considering what an intermediary is for the purposes of the off-payroll rules, are set out in the draft guidance at [ESM10003](#).

**4) How do the contractor invoice if still trading through the intermediary i.e. Personal Service Company (PSC)?**

HMRC's recently published guidance does include sections on how the worker's intermediary accounts for monies subject to the off-payroll working rules. You can still invoice the fee-payer the total amount. You can record amounts in your intermediary's accounts either as gross or net. If gross for example, record the total as turnover and then the tax and NICs deducted would be expenses. PSC should still invoice the client for the worker's services. If the intermediary is registered for VAT, VAT should be charged normally and it is not affected by PAYE deductions.

[ESM10030](#): Draft guidance states that workers must account for all deemed payments received and tax/NIC deducted for this work. As this income has already been taxed it can be extracted using dividends tax-free. There is no requirement for these monies to be withdrawn in the same accounting period the work has taken place or been remunerated.

The deemed employer is the secondary contributor for NICs (ERs) purposes.

Under s.141 CTA 2009 the intermediary will be given relief up to the amount of the deemed direct payment.

If the limited company continues to trade they would still need to produce all statutory requirements and file returns to HMRC. ESM10028/29 provides guidance on how to account for deemed employment payments in the company's accounts.

ACCA [guidance](#) issued for public sector may be used for reference.

**5) Whose details are used when processing payroll for off-payroll deductions- is it the intermediary or the worker?**

It will be the individual worker whose details are used for payroll purposes including National Insurance Number and other personal information. It will not be the limited

company whose details are used. Once submitted the information should link to that individual's Personal Tax Account.

**6) Why is the "CEST" tool not reliable – if it is the option provided by HMRC, its use should be "Conclusive"?**

Sometimes employment status can be finely balanced so CEST is not always able to reach a conclusion. HMRC has provided detailed guidance showing the intent behind the questions and to help customers answer the questions correctly.

It is worthwhile to look at the guidance on how to use CEST at [ESM11000](#) which should help reduce the number of undetermined outcomes. HMRC also provides further guidance from [ESM500+](#) on general employment status principles.

If the CEST tool is 'unable to determine status' then the users can follow the following steps:

- Speak to worker to check if they have answered the questions correctly
- Check the ESM0500 as
- [Call or email the helpline](#) if they need additional assistance in completing the tool.

**7) How often should the fee-payer process the FPS (full payment submission) if payments are made to contractors weekly but the fee-payer processes monthly payroll otherwise? Is there any concession available for more frequent payments to contractors?**

Off-payroll deductions need to be reported through an FPS on or before the payment date. It is up to clients and fee payers how often they choose to make payment runs. There are no plans for any concessions in this area.

**8) How often should you be running CEST tool?**

Once the status is determined, if there is a change in contract or circumstances, CEST tool should be run again as some of the answers may change and it may produce a different result.

As a minimum you should reconsider the relationship whether there is a material change or new contract. Businesses may also choose to introduce reassessments on a periodical basis but this would be a business decision.

**9) Does an "appeal" against a determination need to be decided on the basis of the facts at the date of the original determination or the date of the appeal?**

You should consider all the **available facts when applying the status disagreement** process. It may be that the worker supplies additional information that you were not aware of when you made the original determination.

In addition to the guidance on Gov.UK there is an HMRC helpline available to assist users with the completion of CEST. Alternatively taxpayers should seek their own independent, professional advice. It is up to the end client to consider any status disagreements.

**10) How to determine the size of the company?**

The off-payroll rules establish the responsibility of the medium and large organisations to determine the status of the workers and apply off-payroll rules. The definition of size rules can be found at s.382 Companies Act 2006 or at ESM10006. Size rules apply to the client only.

The whole group structure should be considered when determining the group's size.

That size then applies to all of the companies within that group structure.

A small company that is part of a wider group must consider the overall size of the group, whether UK based or multi-national. If that small company is part of a medium or large group then it will qualify as medium or large for the purposes of the rules.

More details on size of the company can be found [here](#).

**11) Will HMRC be investigating employees who were previously outside IR35 and then find themselves within IR35 at a later period?**

HMRC have issued a commitment that a contractor's employment status under the new rules will not be used to consider their historic IR35 position under the Chapter 8 rules unless they suspect there has been fraudulent behaviour.

**12) Do I have to provide a Status Determination Status outcome to PSC's who provide infrequent services such as plumbing or decorating for example?**

To demonstrate reasonable care, you should consider the status of anybody engaged via an intermediary. A client has to determine whether the rules apply to engagements and pass this decision on to the worker and the person it contracts with.

There is no minimum contract duration for the application of IR35 rules. Even a contract for two weeks can fall within the rules based on the terms and status determination of the contract.

Decorators and plumbers are often self-employed with no limited company or other intermediary. In this case you would not need to supply an SDS.

**13) Where do we stand with consultants who currently live (and work carried out) outside of the UK, but the invoice for payment (made in their local currency) is made to the UK. Would we need to assess these consultants like consultants based in the UK?**

The rules only apply where there is a UK tax and NICs liability.

**14) Do these rules affect "Auto Enrolment" and holiday pay?**

Chapter 10 does not affect auto-enrolment. The individual does not become an employee of the deemed employer. The individual will remain employed by the intermediary.

Off payroll rules do not entitle workers to employment rights, they are tax / NIC rules only.

CEST has replaced the old ESI tool for status determination. HMRC only considers employment status for tax purposes, employment rights are a different matter. Fee-payer is also not responsible for any statutory payments, student loan deduction.

**15) What information must be provided to the worker for status determination and what is the deadline to process SDS?**

Finance Bill 2020 requires that clients provide an IR35 'status determination statement' when assessing the IR35 status of contractors, before a contract begins. A 'Status Determination Statement' (SDS) is a comprehensive statement from the client which:

- Declares a contractor's deemed employment status following an IR35 assessment
- Provides reasons for reaching this conclusion.

There is no prescribed template for a status determination, but the information it must pass on in order to be a valid SDS is contained in the Employment Status Manual guidance.

The status determination is valid providing a client has taken reasonable care in reaching its conclusion. There is a status disagreement process which can be used if the individual disagrees with the conclusion.

A client must confirm with an individual whether the off-payroll rules apply to an engagement. Determinations made prior to 6 April 2020 can be used providing the requirements are adhered to.

An SDS issued in advance of 6th April 2020 will still be considered an SDS from 6th April onwards. You may receive a disagreement before 6th April which you can deal with in advance, but since there is no legal requirement for an SDS or disagreement process before 6th April the 45 day time limit to respond would only be effective from 6th April.

**16) How will the IR35 rules effect franchises? Would the whole franchise be caught by IR35 or is it on an individual franchisee basis?**

Depending on the particular structure of the business you may need to consider group rules.

**17) What happens if the contractors already working through an umbrella that state they are already PAYE? What is the hirer's obligation in this instance?**

The off-payroll working rules apply to engagements where an individual supplies their services through an intermediary.

**18) Does it apply to the Construction Industry when the contractor recruits smaller subcontractors?**

If an engagement falls within Chapter 10 rules CIS does not need to be considered. IR35 supersedes CIS.

**19) If the client organisation is overseas (within the EU), does this fall within the scope of IR35 rules?**

If the client has a UK tax presence, branch or place of business then they may need to consider the rules should other qualifying criteria are also met. If a client is wholly based offshore the rules will not apply.

**20) If a consultant provides services to a company and the company determines the consultant is an off payroll worker, should the company deduct the tax at a standard rate or is it still up to consultant to pay the taxes?**

If the client determines that the rules apply to an engagement the deemed employer should operate tax and NICs deductions on the deemed payments. An individual should complete a starter checklist when commencing an engagement and tick the declaration which will determine the tax code.

**21) How to determine a Non-Executive Director's status who provides services via their limited company? Do the rules apply to them?**

Any directorship is automatically treated as caught by the new rules as this role is an office based role. All office holders should be taxed as employees. Answering 'Yes' to the office holder question on CEST will generate an 'inside IR35' outcome.

**22) In the case of RALC Consulting Ltd v HMRC, HMRC argued at tribunal that CEST result was irrelevant to determining IR35. Are companies at risk of HMRC arguing the same if they rely on CEST?**

HMRC will stand by a CEST determination where it has been completed *accurately and in line* with HMRC guidance.

**23) How do the affected organisations prepare for off-payroll rules changes?**

You need to:

- Review all current engagements
- Review current arrangements for using contingent labour
- Establish processes to ensure status decisions are consistent
- Review internal systems such as payroll software, process maps, HR and on-boarding policies.