



HM Treasury

Guidance for tax assurance process of public sector appointees

July 2019

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Chapter 1

Introduction

- 1.1 This guidance updates HM Treasury's rules for off-payroll workers, following Government reforms to the legislation for the off-payroll working rules in the public sector (IR35). The content of this updated guidance applies to all central government departments and their arm's length bodies (ALBs). It is important that all organisations in the public sector abide by the spirit of these rules and ensure that they meet their tax obligations.
- 1.2 This document replaces the guidance set out in HM Treasury's *Review of the tax arrangements of public sector appointees*¹ published in May 2012 and the two Procurement Policy Notes (PPN) issued by Cabinet Office in August 2012 (Action Note 07/12)² and the Crown Commercial Service in March 2015 (Action Note 08/15)³.
- 1.3 It may be necessary for the Government to make a relatively small number of temporary and/or specialist appointments to ensure public services are delivered effectively. However, it is essential that public sector employers are able to assure themselves that their staff are meeting their tax obligations and the Government remains committed to tackling all forms of tax avoidance.
- 1.4 Arrangements set up explicitly to avoid tax obligations would normally be in breach of the principles set out in *Managing Public Money* (MPM)⁴.

Background

- 1.5 On 31 January 2012, the Chief Secretary to the Treasury announced a review⁵ of the tax arrangements of public sector appointees. The aim of the review was to ascertain the extent of arrangements which could allow public sector appointees to minimise their tax payments, and to make appropriate recommendations.
- 1.6 The review considered the different categories of off-payroll engagements and their associated levels of tax avoidance risk. HM Treasury subsequently introduced a set of rules which required the most senior staff to be on the payroll, unless there are exceptional temporary circumstances. For long-term

¹ <https://www.gov.uk/government/publications/review-of-the-tax-arrangements-of-public-sector-appointees>

² <https://www.gov.uk/government/publications/procurement-policy-note-07-12-tax-arrangements-of-public-appointees>

³ <https://www.gov.uk/government/publications/procurement-policy-note-0815-tax-arrangements-of-appointees>

⁴ *Managing Public Money*, HM Treasury, July 2013

⁵ *Review of the tax arrangements of public sector appointees*, HM Treasury, May 2012

contractors, employers were required to include contractual provisions to ensure that income tax and National Insurance Contributions (NICs) obligations are being met and allow departments to terminate the contract if assurance is not received when sought. For short-term contractors it was for departments to determine where contractual provisions and assurance were appropriate.

- 1.7 Compliance was monitored through an annual review, the results of which were presented to Parliament by the Chief Secretary to the Treasury in a Written Ministerial Statement. Sanctions were considered on a case-by-case basis where a department was found to be in breach of the rules.
- 1.8 The definition of these categories and HMT's rules have now been updated following reforms to wider Government measures in the public sector. This is outlined in further detail in Chapters 2 and 3 below.

Chapter 2

Reforms to Government Measures in the public sector (IR35)

- 2.1 The off-payroll working rules apply to off-payroll workers when they work for a client through an intermediary, often their own personal service company (PSC), but would be an employee if they were providing their services directly. The rules ensure that employment status tests apply to all off-payroll workers, whether they are directly or indirectly engaged.
- 2.2 The off-payroll working rules (commonly known as IR35) were introduced in 2000 and are administered by HM Revenue and Customs (HMRC). They ensure that, where an individual would have been an employee if they were providing their services directly, they pay broadly the same income tax and NICs as an employee would.
- 2.3 The Government has reformed the IR35 legislation with the aim of improving compliance in the public sector. As of 6 April 2017, responsibility for determining whether the off-payroll working rules apply has now been transferred from the individual to the public sector body they work for. As of April 2020, these reforms will also apply to large and medium businesses in the private sector.
- 2.4 Departments must assess each engagement by considering what the relationship between the client and the worker would be if an intermediary were not involved, using information about all working practices of the engagement and not job titles or contracts alone. HMRC has developed a digital tool to help public sector bodies check the employment status of a specific engagement.⁶
- 2.5 If the IR35 rules apply, the public authority, or agency (where there is one in the supply chain), who is responsible for paying the worker's intermediary must deduct income tax and Class 1 employee NICs and pay and report them to HMRC. The public authority, or agency (where there is one in the supply chain) is also responsible for paying Class 1 employer NICs.
- 2.6 The status of the role should be reassessed if there are changes to the engagement or the way the work is done, and periodic re-assessments implemented from 6 October 2017. HMRC best practice recommends the quarterly targeting of areas which attract a greater risk.
- 2.7 In line with the reformed rules for public bodies, central departments and their Arm's Length Bodies (ALBs) will already be making status determinations of their off-payroll engagements and deducting income tax

⁶ <https://www.gov.uk/guidance/check-employment-status-for-tax>

and NICs, where necessary. HM Treasury's updated rules for off-payroll workers, outlined in Chapter 3 below, have been updated in light of this.

Chapter 3

Updated HM Treasury rules for off-payroll workers

- 3.1 HM Treasury continues to expect board members and/or senior officials with significant financial responsibility in central government departments and their ALBs to be on payroll unless there are exceptional temporary circumstances, which will require Accounting Officer sign-off and cannot last longer than six months.
- 3.2 Assurance on the tax affairs of off-payroll workers outside this category – irrespective of engagement length or payment level – is now addressed via the statutory requirements of the reformed off-payroll working rules (IR35) legislation. HM Treasury therefore no longer requires the right to assurance to be built into contractual provisions. Departments will need to ensure they have the necessary arrangements in place to allow them to comply with the IR35 rules.
- 3.3 HM Treasury’s updated rules are as set out in Table 3.A below.

Table 3.A: Updated HM Treasury rules for off-payroll workers

Category	Seniority	Rule
A	Board members and/or senior officials with significant financial responsibility	To be on payroll, unless there are exceptional circumstances – in which case the Accounting Officer should approve them – and such exceptions cannot exist for longer than six months.
B	Under Board level or senior officials without significant financial responsibility	Under reformed Off-payroll Working Rules (IR35) legislation, departments must determine whether the IR35 rules apply when engaging an off-payroll worker. Assessments should be conducted in line with HMRC guidance. It is for departments to determine whether additional assurance may be appropriate.

- 3.4 HM Treasury will no longer conduct an annual review into compliance with its rules for off-payroll workers. However, increased transparency on category A engagements will be required in future reporting cycles, with Accounting Officers remaining accountable for ensuring compliance with the updated rules. This is in line with the expectation that employers should be taking responsibility for the assurance of their employees.
- 3.5 HMT retains the right to review any category A engagements and, if in breach of the updated rules, to consider applying sanctions in the form of a fine to the departmental resource budget.
- 3.6 Departments should continue to refer to the Public Expenditure System (PES) guidance on the preparation of their Annual Report and Accounts and will remain accountable to Parliament for the numbers reported.
- 3.7 It is for Accounting Officers to determine which posts in their organisation fall within the scope of significant financial responsibility, but HM Treasury's expectation is that all senior officials with decision-making responsibility for the management and spending of public money are within scope unless clearly outside. Accounting Officers should consider the individual's level of spending authority relative to the relevant organisation's budget.
- 3.8 Category B engagements are within the scope of HMRC's compliance activity in accordance with of the Off-payroll Working Rules (IR35) legislation.
- 3.9 Reporting Tables, as in the PES guidance note for the current 2018-19 reporting cycle, will continue to request information to assist HM Treasury's general oversight of the use of interim staff in central government, particularly long-term, high paid engagements. Such information includes, but is not limited to:
- The number of existing engagements for more than £245 per day (excluding VAT) and that last longer than six months at time of reporting
 - Engagements for more than £245 per day (excluding VAT) which reached six months during the financial year reported

Chapter 4

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