



## 'Going Limited' in the Construction Industry

Some contractors provide their services through their own limited company. In the construction industry, this is often called 'going limited'.

This has certain advantages for both the client/agency and the contractor. Contractors can receive payment for some or all of their fees as 'dividends', which helps to reduce their tax liability, and clients/agencies limit any liability they may have to account for income tax or NI.

## IR35

IR35 is a piece of legislation that aims to prevent contractors from avoiding income tax by 'going limited'. It applies to any contract the contractor is engaged on if, in the absence of their company, the contractor would be considered a 'deemed employee' of the client.

If IR35 applies:

- any payments made to the contractor's company will be subject to deductions for income tax and NI.
- the contractor is responsible for deciding, at the end of each tax year, whether any contracts they have worked on would have been considered 'deemed employment'.
- the contractor's company will be liable to account for income tax and NI on all of the payments it has received under any 'deemed employment'.

## Off-Payroll rules from April 2020

From April 2020, new rules will be introduced. These are known as the 'off-payroll rules', and will mean that:

- the client (not the contractor) will have to decide, at the beginning of each contract, whether there is 'deemed employment'

If so, whoever pays the contractors company (this could be an agency or the client) will be required to deduct income tax and national insurance from payments made to the contractor before these are paid.

What's the impact:

Contractors could see a significant reduction in income. If a client decides that there is 'deemed employment', payments made to the contractor's company will be net of tax. This will remove many of the advantages of 'going limited'.

- Contractors may be forced into working through agencies or umbrella companies operating PAYE.
- Clients or agencies will incur increased cost from having to operate PAYE, account for employers NICs and (if applicable) Apprenticeship Levy charges.
- Contractors are likely to challenge 'deemed employment' decisions made by clients, leading to disputes.
- Contractors could start questioning their employment status more generally, which could lead to an increased demand for casual worker contracts which provide for annual leave and pension, and potentially even retrospective claims.

## When do the Off-Payroll rules apply?

The Off-Payroll rules will only apply if the end client is considered to be either a medium or large business. If the end client is a 'small business', Off-Payroll rules will not apply. A small business is defined as having two of the following:

- Annual turnover of less than £10.2m
- A balance sheet of less than £5.1m
- Fewer than 50 employees



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## When will a contractor be in 'deemed employment'?

This will depend on how the work is carried out by the contractor. The terms of the contract will be important but are not conclusive.

Examples that are likely to increase the risk of IR35 applying are:

- The client controls how, when and where the services are provided
- Contractors are paid on an hourly or monthly basis according to time worked
- There is an obligation on the contractor to undertake work or the client to provide it
- The client provides the contractors with equipment; or
- The contractor only tends to work for one client.

## How will this operate with the Construction Industry Scheme (CIS)?

Contractors who operate under CIS will have 20-30% of their payments 'withheld' as a pre-payment for any income tax due, unless they are permitted to receive 'gross payments'.

At the end of the tax year, CIS contractors will submit their tax returns, and will typically claim some of this back by off-setting expenses against their income.

Under the Off-Payroll rules:

- If the client decides that the CIS Contractor is in 'deemed employment', then the Off-Payroll rules will take precedence over CIS.
- This means that CIS deductions will not be made, and income tax and national insurance deductions will be made from the contractor's payments instead.

If the Off-Payroll rules do not apply (for instance, because the client is a 'small business'), then:

- CIS deductions will be made as normal.
- The existing IR35 regime will continue to apply to any 'deemed employment' contracts.
- Contractors will need to account for any income tax and national insurance payments in relation to any contracts that fall within IR35 in their annual returns. However, this liability can be off-set against any CIS deductions already made.

## Will the Off-Payroll rules apply to sole-traders?

No – the Off-Payroll rules only apply to contractors who have 'gone limited'. If a sole-trader contracts directly with the end client, the question is purely one of employment status (i.e. is the individual genuinely self-employed, or are they in fact a 'worker'). However, as is currently the case, if a sole-trader provides their services through an agency, then the agency may be obliged to make income tax and national insurance deductions if the contractor is under the 'direction, supervision or control' of either the agency or the end client.

## What should your business be doing now?

Companies should consider how they engage with contractors. The following actions should be carried out:

- Auditing and reviewing existing contractor relationships and contracts. Contracts can be drafted to mitigate the risk of IR35 applying. Similarly, a poorly drafted contract can substantially increase your risk
- Estimating any likely cost increase due to the Employer's NIC and Apprenticeship Levy charges under IR35 and potential changes in the contractor's rates
- For identified contractors falling within IR35, considering whether the extra costs are commercially necessary, or whether their current contracts should be amended or terminated.
- Provide training for employees who are responsible for determining the status of contractors engaged by your business.

## What if I want to know more?

If you would like to know more about the proposed new regime and the impact it is likely to have on your business, please do not hesitate to contact our employment solicitors at Herrington Carmichael on 0118 977 04045.

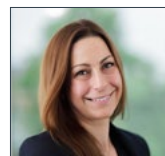
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