

# Working through intermediaries: IR35 update

May 2017

This update relates to the HM Revenue and Customs (HMRC) intermediaries legislation known as IR35<sup>1</sup> and in particular the application of these rules as amended from 6 April 2017.

## Background

IR35 has potential application to individuals who provide services through an intermediary, such as a personal service company. The purpose of these HMRC rules is to ensure that individuals who provide services in this way are paying the correct amount of tax and, in particular, that individuals who are employed, as distinct from self-employed, are taxed appropriately.

NHS Improvement has sought to support NHS providers by offering advice to ensure that locums working throughout the NHS pay the correct amount of tax that reflects their individual status – and where this is not the case that this is addressed. The purpose of this further update is to amend the position we have previously set out.

## The IR35 rule change from 6 April 2017

From 6 April 2017, tax rules changed so that the task of determining whether or not IR35 applies shifted from the intermediary to ‘public authorities’ (which include all NHS providers). As ‘fee payers’ under the legislation, public authorities are generally required to deduct tax and national insurance at source where IR35 applies.

NHS providers should note that this rule change does not alter the substantive question of whether or not IR35 applies to an individual.

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<sup>1</sup> Chapter 8 Part 2 (ie ss48-61) Income Tax (Earning and Pensions) Act 2003 as modified and added to by Schedule 1 of the Finance Act 2017.

## **Our previous position**

Before 6 April 2017, NHS Improvement advised providers of this impending rule change. On our understanding that many individuals currently providing services to the NHS through intermediaries fall within IR35, we anticipated that providers would need to ensure that all locum, agency and bank staff were subject to PAYE and on payroll for the new financial year. This was not accurate and our revised position is as set out below.

## **Updated guidance to NHS providers**

The introduction of the rules has made clear that an assessment of whether or not IR35 applies should be carried out in a fact-specific way; that is, it should be applied on a case-by-case basis, rather than by a broader classification of roles. Therefore, NHS providers, and all others categorised as public authorities, will need to consider whether or not an individual in their particular situation is self-employed when they determine the application of the IR35 rules in that case. This consideration must be conducted fairly, accurately and take into account all relevant factors, including representations which may be provided by the individual.

HMRC has provided a simple tool to help determine whether an individual should be considered employed for tax purposes. Providers and individuals may find this helpful for guidance. This tool does not negate the necessity for careful case-by-case scrutiny. The link to the tool is: [www.gov.uk/guidance/check-employment-status-for-tax](http://www.gov.uk/guidance/check-employment-status-for-tax)

NHS Improvement recognises this rule change has substantial administrative implications for providers. We expect all providers to comply in full with their legal obligations by ensuring that all locum, agency and bank staff are taxed appropriately following a proper analysis of their individual circumstances.

Failure to comply with the updated legislation in relation to IR35, and correctly assess the worker contract and/or notify the third-party agency of determination, could result in providers being liable to pay the equivalent PAYE deductions to HMRC. In addition, inaccurate assessments of individual circumstances could lead to unnecessary cost, time and expense, and this should be avoided. With regard to personal service companies, NHS Improvement recognises that NHS providers may contract with individuals through such entities.

Finally, NHS Improvement will not provide advice on individual cases and providers should seek independent tax advice where they consider this necessary and/or appropriate to resolve issues that may arise on consideration of specific cases.

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