

# Important changes to intermediaries legislation affecting GP locums and practices (IR35)

What is IR35?

IR35 is an anti-tax avoidance measure introduced by the Government in April 2000. It is also known as the 'intermediaries legislation'.

It targets individuals who attempt to avoid paying employee income tax and national insurance contributions (NIC) by supplying their services through an intermediary (usually a 'personal service company') and paying themselves dividends.

The IR35 regime investigates the nature of the relationship between the worker and the end-user to determine whether, were it not for using a PSC, that individual would be considered as an employee or office holder (for example, a director) of the client.

Where an employment contract would have existed between the worker and the client in the absence of the intermediary, IR35 ensures that the income tax and NIC liability in respect of that worker is broadly equivalent to that of an employee. It does this by imposing PAYE and NIC obligations on the intermediary, although from April 2017 those obligations transfer to the client where they are a public sector body.

IR35 is part of a wider body of anti-tax avoidance rules which may also need to be considered where individuals are supplying their services through intermediaries or agencies.

What is a personal service company (PSC)?

A personal service company (PSC) is a company or partnership, which is set up by a worker and whose business consists of selling the services of that worker to an end-user or client.

The worker is usually a director of the PSC and exercises management and financial control over it. The PSC may supply the worker's services either directly to the end-user, or via an employment agency which is paid by the end-user, and which in turn pays the PSC after deducting its fee for finding the work. The worker then draws a salary from the PSC or receives dividends as a shareholder.

When does IR35 apply?

IR35 broadly applies when the following three conditions are met:

1. An individual ('worker') personally performs services for another person or organisation ('client'), or is under an obligation to do so,
2. The worker carries out the performance of those services under arrangements involving an 'intermediary', rather than under a contract directly between the client and worker, and
3. The circumstances are such that:
  - if the services had been provided under a contract directly between the client and worker, the worker would be regarded as an employee or office holder of the client for income tax and NIC purposes, or
  - (for income tax purposes) the worker is an office holder under the client and the services relate to the office.

An intermediary means any person (including a partnership or unincorporated association of which the worker is a member) whose relationship with the worker meets certain conditions, depending on whether it is a company, partnership or individual, and from whom the worker (or an associate of the worker) receives, or is entitled to receive, directly or indirectly, a payment or benefit that is not employment income.

What are the consequences of IR35?

If IR35 applies, the worker is treated as an employee for income tax and NIC purposes. An approximately equivalent amount of income tax and NIC is payable as would have been if the individual was directly employed by the client.

Until 5 April 2017, it is the intermediary's obligation to:

1. Determine whether IR35 applies
2. If IR35 applies, deduct appropriate tax and NIC from any payments made to the intermediary.

From 6 April 2017 these obligations transfer to a public sector body (or recruitment agency where it uses one) which engages a worker through a PSC. For these purposes, a public sector body is defined as a "public authority"

under the Freedom of Information Act 2000 or its Scottish equivalent, which includes not only NHS England, clinical commissioning groups (CCGs) and NHS Trusts, but also GP practices providing GMS and PMS services.

In addition, the 5% allowance to be deducted for 'notional expenses' when calculating an IR35 liability is removed for PSCs operating in the public sector. The application of IR35 is assessed on a case-by-case basis so the circumstances of each engagement must be considered individually in order to determine whether it is caught by the rules (or any other applicable rules). Here are some examples of how it might affect locum GPs and GP practices which engage them.

#### Example 1

A locum GP contracting directly with a client

A locum GP operating as a sole trader who contracts directly with a client (such as a GP practice) is excluded from IR35 as there is no intermediary. For such individuals the issue is purely one of employment status.

#### Example 2

A locum GP contracting via an intermediary

Where a locum is contracting with a client or recruitment agency via an intermediary (such as a PSC), IR35 may apply. From April 2017 where a public sector body (including a GMS or PMS practice) engages a worker to personally perform services under arrangements involving an intermediary, the obligation to determine whether IR35 applies and, if so, account for the relevant income tax and NIC will be on the public sector body (or agency if it uses one). Previously these obligations were on the PSC.

#### Example 3

A locum GP contracting via an agency or chambers

A locum GP who works for a client via an agency could contract either directly with the agency, or via an intermediary (such as a PSC). IR35 potentially applies in both cases. In the former case, the agency itself could be classed as an intermediary, although this arrangement may instead be caught by another regime, known as the 'agency rules'.

IR35 may also apply where a locum GP works via chambers. However, this will depend on how the chambers are structured, and the particular contractual arrangements.

It should be noted that IR35 may not only apply to locum GPs, but also any other doctors working via an intermediary.

#### Getting advice

HMRC has published guidance on IR35 and launched a new online employment status service tool to obtain its view of whether any current and prospective workers would fall within the new off-payroll rules.

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

HMRC has stated that it will stand by the result its service produces unless it is based on inaccurate information. Where artificial arrangements are created in order to achieve a particular outcome from the service HMRC will treat it as evidence of deliberate non-compliance which may attract higher penalties.

If you remain unsure whether IR35 applies, you should consider seeking expert advice.