

IR35 for Interim Managers

The draft legislation has confirmed HMRC's plans to roll out the off-payroll working rules to the private sector from April 2021 with a clear look at what the rules will look like.

Whilst the rules largely mirror those already in place in the public sector, which require the hiring organisation to make the decision on whether their contractor placements are considered employed for tax purposes or self-employed, and the fee-payer responsible for deducting the relevant taxes, there were a few key points from the draft legislation's release:

- Whilst all public sector bodies are under scope of the rules, small companies will be given an exemption in the private sector. This means that hiring organisations classed as 'small' according to the Companies Act 2006 in a tax year need not apply the new rules – instead candidates will still be liable for determining their status and making the relevant tax deductions.
- HMRC has made it a requirement in the legislation for hiring organisations to submit a 'status determination statement' to both the contractor and immediate supplier. In a likely bid to reduce blanket assessments, the statement **must** include both the decision and the reasons why the decision was made. To incentivise the appropriate application of this requirement, clients will also be classed as the fee-payer and therefore liable for any taxes due, until this obligation has been fulfilled.
- A client-led disagreement process must be put into place. The legislation requires hiring organisations to respond to any dispute of status from either contractor or fee-payer within 45 days of receipt. The response must provide a conclusion and the reasons behind the conclusion. Once again, if the client fails to meet this obligation, they will be classed as the fee-payer and liable for any deductions due.
- Despite numerous calls for a clear definition, the 'reasonable care' clause has yet to be defined. In the public sector, and also in the private sector, clients are required to take 'reasonable care' in their decision-making, however HMRC have yet to provide any such examples. Supporting documentation did however suggest to HMRC providing further guidance in the future.

To date Boyden has:

- Appointed an external specialist to review both candidate and client contracts
- Assessed all current interims on assignment
- Worked with an external specialist to develop a "status determination checklist"
- Hosted two IR35 events for our interim network

Whilst IR35 has always proved a contentious subject with many disagreements between HMRC and the legal system, we shall endeavour to keep ourselves abreast of the ever evolving IR35 landscape in order to keep our network informed.

Whilst we are confident that we are taking the appropriate steps to ensure we are properly assessing future IR35 status for each individual role, we would always recommend individuals to seek their own independent advice.

If you have any queries then please do not hesitate to get in touch.