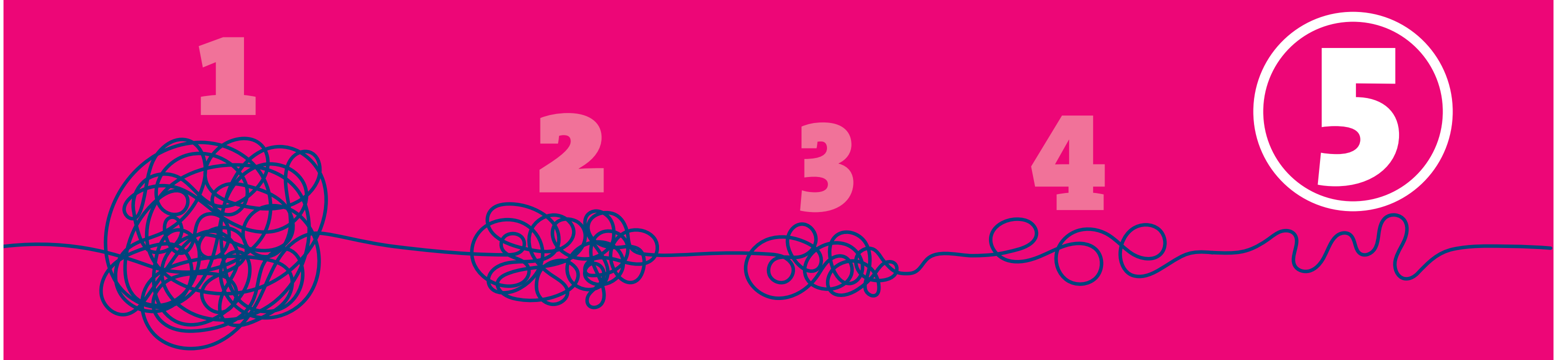

Misunderstandings about IR35

New off-payroll working rules have been in place since April, but there is lingering confusion about what they mean. We clear up five common misunderstandings.

Put simply, off-payroll working rules (formerly known as IR35) are designed to reduce tax avoidance by contractors who HMRC believe to be 'disguised employees'.

These are people who work in a similar way to employees, but bill for their services via their limited companies or as self employed businesses. They do this in order to make their tax affairs as tax efficient as possible.

It used to be the responsibility of contractors to assess their own IR35 status. However, in April 2021, for those operating via a personal services company (PSC), this burden switched to the 'end user' client – if the client is a qualifying medium or larger business.

1 By far the biggest misconception is that once a contractor is assessed to be 'inside IR35' and a 'deemed employee' this means the same thing as being a permanent employee. It does not.

While the client is now responsible for the contractor's PAYE tax and NICs, the contractor is still viewed as working for that client through their own PSC and has none of the benefits a permanent employee has – such as paid holidays, paid sick days, pension and wrongful dismissal rights. So, a contractor will still need to continue to run their PSC and file annual accounts.

2 A contractor will not always go on the payroll of the end user client that makes the IR35 status determination. If a contractor works for the end user client through an agency or an umbrella company, the contractor will go on the payroll of that third party.

In this scenario, contractors should be aware that their client is possibly more likely to determine they are inside IR35 because all payroll costs pass to the third party. At the same time, agencies should plan how they will meet those extra costs.

3 If a contractor is assessed to be inside IR35 as a deemed employee, the contractor's VAT responsibilities have not changed and remain exactly as they were before. The contractor will still need to raise an invoice including VAT. The client will then deduct PAYE and NICs (net of the VAT) and make the appropriate payment, including the contractor's VAT charge. The contractor will then make the correct VAT payment to HMRC.

4 A contractor working inside IR35 for just one client does not have to continue paying corporation tax and tax on dividend payments because PAYE will already have been deducted from earnings. However, to claim corporation tax exemption, the PSC must still file its accounts – including a corporation tax return that should indicate where PAYE has already been applied.

The rules around this area get more complicated if a contractor is working for one client inside IR35 and others outside IR35. Contractors (or their accountants) will need to calculate in their 2022 returns what proportion of their overall profits are exempt from corporation tax and what dividend payments are exempt from tax.

5 The IR35 changes introduced this April don't replace all the pre-existing rules in this area. So, for contractors working for clients that fall below the qualifying size of medium or larger organisations, or for self-employed clients, it's still their responsibility to make their own status determination.

HMRC offers a Check Employment Status for Tax (CEST) tool to help determine the relationship between a contractor and a client at *https://tinyurl.com/zg4ufoc*

If you would like advice, please speak to your usual Shipleys contact. More details on the Shipleys website at: *https://tinyurl.com/y6ezxnrd*