

To: All Practices in Surrey and Sussex LMCs

23 March 2017

Dear Colleagues

(Some) of what you need to know about the IR35

What is it?

IR35 refers to anti-avoidance tax legislation designed to ensure the tax on those with "disguised employment" is at a rate similar to those in employment. It refers to workers who receive payments from a client via an intermediary, for example, their own limited company. It came into force in April 2000 having been introduced by the then Chancellor of the Exchequer, Gordon Brown, the year before, and allows the HMRC to "look through" the contractual arrangement between the worker's company and client company and treat the worker as an employee, with consequential tax and NI implications. However, the application of IR35 rules do not of themselves create an employee/employer relationship, the arrangement relates to tax and NI payments only.

What is changing?

After 6 April 2017, i.e.: the start of the 17/18 tax year, for public sector body engagements, it will be the responsibility of the organisation engaging the worker to assess whether or not the worker falls within or outside IR35 rules. Previously, the worker was responsible for deciding their status.

If the engaging organisation (or agency if used instead) decide the worker is within IR35 rules, they must apply tax and NI deductions at source.

Who is affected?

This transfer of responsibility for assessing IR35 status only applies to public bodies; this includes, within the health sector, NHS England, CCGs, NHS and Foundation Trusts, and GMS and PMS Contractors. However, APMS Contractors (if no other type of contract is held) and private commercial organisations, which may for example run OOHs, WICs, and UCCs, are not affected and do not have to undertake this worker assessment, which will remain as now the responsibility of the worker

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How is IR35 status assessed?

Broadly, IR35 would apply when the following three conditions are met:

- A worker performs services personally for another client/engaging organisation.
- The worker carries out those services under an 'intermediary' rather than having a direct contract between the worker and the client/engaging organisation.
- If the services had been provided under a contract directly between the worker and the client/engaging organisation, the worker would be regarded as an employee (note the 'look through' comment in Paragraph 1)

An intermediary is any legal person (including a partnership or personal service company) whose relationship with the worker meets certain conditions and from whom the worker, or associate of the worker, receives or is entitled to receive a payment or benefit which is not employment income.

HMRC Assessment Tool

The HMRC has published guidance on IR35 which is available at:
<https://www.gov.uk/guidance/ir35-find-out-if-it-applies?>

and has also launched a new on-online employment status service tool to obtain a view on whether only current or prospective workers would fall within the rules. This is available at:
<http://www.tax.service.gov.uk/check-employment-status-for-tax/setup>

How often must this assessment be undertaken?

Each time a new engagement occurs.

Being a Sole Trader

If a GP is a sole trader and directly undertakes locum work for practices then there is no intermediary between them and the practice, and IR35 rules cannot apply

Working via an Agency/Chambers

In both situations IR35 needs to be considered:

- If a GP is a sole trader but works via an agency, then the agency could be considered an intermediary
- If a GP works via their own company, but then through an agency, there is more than one intermediary between you and the engaging organisation.

However, in this case responsibility for assessing if IR35 applies, and applying appropriate tax and NI deductions, lies with the agency. The rules relating to Chambers are complicated and depend on the legal structure involved – colleagues will need to obtain specialist advice

What should practices do if IR35 applies?

They must pay a locum via the practice payroll, deduct tax and NI, add 13.8% employers NI for all earnings above £156 per week, and generate a payslip and end-of-year P60, as for other employees.

What happens if the practice/agency IR35 is wrong?

If a practice incorrectly decides a locum is outside IR35 then HMRC would, if this is identified, be able to claim back tax and NI contributions relevant to that worker's service, from 6th April 2017. There are also penalties though these would depend on the circumstances.

From a locum's point of view, the practice/engaging organisation or agency would be liable. Engaging practices are not supposed to take a blanket approach; each worker's status is individual to them, and there should be an IR35 assessment at each engagement. However, clearly from an HMRC point of view, deciding a worker is inside IR35 generates more tax and NI; from an employer point of view it increases costs, in relation to employers NI contributions and payroll administration. A worker can turn to the HMRC if they believe the decision is incorrect, but in practical terms there may be little a locum can do.

IR35 and Employment Status

IR35 only relates to tax and NI contributions and does not create an employment status in law, and thus any employment rights.

Does this apply to just GP practices?

No, this applies to Hospital and Foundation Trusts, and this IR35 change should be seen in the wider context of anti-tax avoidance legislation, social expectations around tax payments, and also the Department of Health/NHS England's attempts to reduce the costs of medical and other professional locums within the NHS.

With best wishes

Yours sincerely



Dr Julius Parker
Chief Executive

Disclaimer

This document has been prepared by the LMC based on BMA guidance and represents general advice; however GP practices, and General Practitioners, should obtain expert tax or employment law advice before making any financial or other decisions based on IR35 status or employment status