

# What Is IR35 and Why Does It Matter?

Here are the more common FAQs with respect to the implementation of Off-Payroll rules in the private sector (IR35).

## Q. What Is IR35?

IR35 (or you may see it referred to as Off-Payroll) is tax legislation that is designed to combat tax avoidance by workers in the UK supplying their services to clients via an intermediary, such as a Personal Service Company (PSC), but who would be an employee for tax purposes if the intermediary was not used. Such workers are called 'disguised employees' by Her Majesty's Revenue and Customs (HMRC). From April 2021, it will be the responsibility of private sector clients to determine a PSC worker's status and if the off-payroll rules apply to that engagement.

## Q. Why do I need to be concerned about IR35?

Should you be seeking to engage a contingent worker who will be located in the UK and deliver services in the UK, then it needs to be determined whether IR35 applies. If it does, then it is "inside" IR35, and if it does not, it is "outside" of IR35.

## Q. How will I know if this position is "inside" or "outside" IR35?

HMRC has devised the online CEST test. CEST is short for Check Employment Status for Tax. It's a digital tool designed by HMRC to help users decide if a worker falls inside or outside IR35.

The tool is in a quiz-like format and takes up to five minutes to complete. Access it at <https://www.gov.uk/guidance/check-employment-status-for-tax>. It is important all questions are answered truthfully and with reasonable care.

## Q. Are there any alternatives to the CEST test?

Yes, some companies have decided to use alternate tests that are similar to the CEST test. Also, some companies have decided to implement directives on the use of PSC workers across their UK locations or across certain areas of the business. For more information, please reach out to your local PRO representative.

## Q. Do I need to go and raise this with my HR / Talent / Procurement team for their review?

No. PRO Unlimited has been proactively working with your business sponsors to update them on this legislation and the impact it may have on onboarding contingent talent.

## Q. Should I complete the CEST test or does the PRO team?

The test can be completed by you, PRO or together. If PRO is completing on your behalf, you will need to provide responses to all questions, done via agreed protocols. Please speak to your PRO representative if you are not sure.

## Q. What if I don't have time to complete the test?

PRO will work with you to ensure this is as seamless a process as possible and to gather the required information for the test. The determination will be shared with you, and you will be required to attest to the outcome of HMRC's CEST test and confirm you have taken reasonable care in completing the test or supplying the information.

## Q. What are the possible results of the test?

The CEST test will come back with three possible outcomes:

- ▶ **Intermediaries Legislation Applies – Inside IR35:** We must ensure that any worker engaged is either "PAYE" (W2 for our U.S. colleagues) or "Off-Payroll," where Pay As You Earn (PAYE) and National Insurance Contributions (NICs) must be deducted before paying it to their PSC account.
- ▶ **Intermediaries Legislation Doesn't Apply – Outside IR35:** This indicates the engagement is not one of employment for tax purposes, and the contingent worker can be engaged through their PSC without the party that pays them withholding PAYE or NICs. We will, however, need to complete the test again on a periodic basis and for any extensions. It may also be a requirement that any "Outside IR35" determination is given a secondary review prior to being communicated to the supply chain or worker.
- ▶ **Inconclusive:** PRO has worked with your internal teams to develop a process for reviewing inconclusive results or where the business doesn't agree with the results.

Please speak with your PRO representative on this for more information.

## Q. OK, so I have completed the CEST test, now what do I do and what happens next?

There will be a series of questions for you to complete on Wand (or that you will be asked by PRO if they are uploading your request on Wand) to confirm that the CEST test has been completed and that a copy has been saved for any future audit purposes. PRO will also ensure that the determination from the CEST test is shared with any staffing partners and/or end workers and that the workers are engaged in the most appropriate manner.

## Q. What if I want more information on IR35?

Please reach out to your PRO representative. PRO has published a number of white papers and other documentation in relation to IR35 legislation in the UK, and we also host a number of seminars and would be delighted to share any information with you.