

Employment status and IR35 classification – the potential impact on you

What is IR35?

1. IR35 (also known as the ‘intermediaries legislation’) is an anti-tax avoidance measure introduced by the Government in April 2000. It targets individuals who attempt to avoid paying employee income tax and national insurance contributions (NIC) by supplying their services through an ‘intermediary’ such as a personal services company¹.
2. In April 2017, the government introduced reforms to IR35 specifically for the public sector (known as the ‘off-payroll working rules’). Under these reforms, the public sector body became responsible for determining the employment status for tax of the individual providing the services via an ‘intermediary’ and for operating PAYE to deduct tax and NIC, if necessary. We previously issued a detailed briefing on this matter in October 2017².
3. While we have assisted several members with regard to concerns over their employment status classification since that time, it has recently become apparent that several Health Boards may have adopted a blanket application of IR35 status for doctors working in out of hours services or managed practices, whether an intermediary company is involved or not.
4. Individuals can access HMRC’s online employment status for tax (CEST) tool to obtain a view on their employment status. The CEST tool can be accessed at: www.tax.service.gov.uk/check-employment-status-for-tax/setup

Welsh Government COVID-19 Bonus Payment

5. Under the Welsh Government’ NHS COVID-19 bonus payment scheme, people deemed to have been working under ‘IR35 arrangements³’ are not eligible for the payment, even if they have satisfied all other criteria.
6. Given concerns about the Health Boards’ blanket application of this designation for all working OOH or in managed practices, this has meant that doctors who have worked throughout the pandemic are excluded from receiving recognition, even if they do not use an intermediary company and are thus not truly captured under IR35 arrangements.

¹ Further information on IR35 is available at:

www.bma.org.uk/pay-and-contracts/tax/ir35/how-ir35-affects-doctors

² BMA Cymru Wales ‘FAQ: Health Board approach to taxation and employment status of GPs...’ October 2017

Available at: www.bma.org.uk/media/1546/bma-wgpc-faq-hb-taxation-status-change-oct-17.pdf

³ gov.wales/nhs-and-social-care-financial-recognition-scheme-guidance-primary-care-workers



7. GPC Wales has raised this with Welsh Government officials, who have indicated that they wish to ensure the bonus payment scheme is as inclusive as possible, but will not amend the exclusion criteria. We agree that amendments would not be necessary, provided that Health Boards did not apply incorrect taxation status labels en masse.

Next steps for those affected

8. We would encourage any member who has made an application for the bonus payment, although has not had their bonus payment made on the grounds of falling under “IR35”, to **contact the BMA for advice** to ascertain whether there are grounds to challenge.
9. The deadline for applications to the scheme has now passed, but the dispute resolution scheme in place has the deadline of 30 September 2021. If you believe you have been affected and should be in receipt of the bonus payment (or have been deterred from making an application due to a potentially incorrect employment status classification), there is a need to come forward sooner rather than later.
10. Incorrect employment status may also have an impact on your employment legal rights. For example, this could mean that individuals are entitled to unpaid holiday pay. This is a very complex area of the law, with advice having to be given on an individual case by case basis. **If you feel you are affected, please contact the BMA for further support.**

Employment advice for BMA members

If you're a BMA member with a question about your contract, pay or any other aspect of your working life, contact our advisers – they are here to help you.

- ✓ Call [0300 123 1233](tel:03001231233)
- ✓ Email support@bma.org.uk
- ✓ [Chat with an adviser online](#)