

WHAT YOU NEED TO KNOW

Locum tax changes from April

Accountant James Gransby analyses the impact of new IR35 legislation coming into effect in April 2017:

We are less than one month away from the implementation of new IR35 rules which could mean that locum GPs operating through a limited company may face an extra tax charge from 5 April 2017. This will generate work for all GP practices that engage locums.

What is the change and why is it changing?

The IR35 rules came into law in 2000 and were revised in 2011 to take away the tax advantages for individuals operating through a limited company where the nature of the relationship was more like that of an employee.

Up until now the onus was on these individuals, such as GP locums, to decide whether the rules applied to them. This has historically been largely unsuccessful in the Government's eyes. The change coming into force means that it will become the responsibility of GP practices (who are deemed to be public bodies for the purpose of this legislation) to decide whether the IR35 rules apply to the locums they engage, even those engaged via an agency.

What effect will this have on GP practices and the locums themselves?

GP practices would have never had to consider these rules before.

From April 2017, however, when a locum provides services to a GP practice through their own limited company, also known as a personal service company (PSC), the practice will need to check whether the rules apply.

If a locum falls within the legislation then the practice must deduct 32% from the payment to the PSC (and pay that to HMRC) – this comprises basic rate tax at 20%, plus employee's National Insurance Contributions (NICs) at 12%. The practice must also pay any employer's NIC to HMRC.

This would be done through the payroll system by essentially setting the locum up as a new category of employee called an 'off payroll worker' which does not come with the same rights as an employee. The locum should keep track of the tax and NICs deducted at source and adjust their tax return to get credit for the tax paid.

How do practices find out if the rules apply?

There is an online tool <https://www.gov.uk/guidance/checkemployment-status-for-tax> which practices need to use to test if locums should be treated as falling within the IR35 rules.

The toolkit takes practices through a series of questions and it is essential that these are answered accurately. A number of users are reporting that on using the tool the result is given as 'Unable to determine the tax status of this engagement'. In this instance practices should seek advice from a specialist accountant or contact the HMRC IR35 helpline to get a determination.

On unravelling the questions used throughout the tool there appear to be a number of key answers which affect the outcome. The most important of these is:

'Would the end client (that is the GP practice) accept the worker's business sending someone else to do this work instead?'

If the answer is 'yes' and if the locum company would have to pay the substitute worker, then the online tool quickly reveals that the IR35 legislation does not apply. This is even if the locum company has never substituted someone else to do the work in the past.

Another key question is:

'What items does the worker have to buy for this engagement that they can't claim as an expense from the end client or an agency?'

If the answer here is 'Vehicle – for work tasks, not commuting', that is, using their company's car for home visits to patients, then the toolkit again answers that the legislation does not apply.

If the answer to this question is instead entered as 'not

relevant', then the tool comes back with the answer that it is unable to determine the tax status from the answers given.

If the online tool confirms that IR35 rules do not apply, then the practice must keep evidence to prove this. HMRC has confirmed that keeping a printout of the online tool result would be sufficient evidence for this purpose.

Contact us

James Gransby is Head of Healthcare at MHA MacIntyre Hudson and sits on the Executive Board of the Association of Independent Specialist Medical Accountants (AISMA)



James Gransby
Partner

E: james.gransby@mhllp.co.uk
T: +44 (0)1622 754 033



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