

Will IR35 change how you pay tax?

Tax rules for workers with their own limited companies are due to change in April 2020 for anyone with private sector engagers who have more than 50 employees, and turnover above £10.2m a year.

From then, the legal duty to determine whether the worker is actually an employee for tax purposes, despite working through a personal service company, will rest with the company that engages you ('the engager'). The legal framework is often referred to as 'IR35'.

How does this affect members?

Because engagers will be responsible for any unpaid employment tax, and potential penalties from HMRC, many have begun to review the relationships they have with workers who provide their services through limited companies.

Engagers have always had to determine the tax status of self-employed sole traders that they hire, and some are also reviewing the tax status that they will be applying to them in future. In most cases this is the result of engagers introducing new procedures to determine which freelancers (whether sole-traders or limited companies) should be treated as employees and paid through their PAYE system.

What is the union position on this from 2020?

Bectu believes that the vast majority of freelance members in the entertainment sector are small businesses in their own right, and therefore not employees of their engagers. However, the union's experience with the BBC (which, with other public-sector engagers, went through this change two years ago) suggests that a number of members *could* be re-categorised as employees in April 2020, across film, TV, theatre, and live events.

What should members do next?

For guidance on how to challenge this, check the *Tax for Freelancers* booklet (free to all members through the Bectu website).

Ask your engager for a clear explanation as to why you have been categorised as an employee. (From April 2020 there will be a legal requirement for an answer to be given within 45 days if the worker has a limited company.) Members able to obtain a Letter of Authority (the so-called 'Lorimer Letter') from HMRC should generally be able to satisfy clients that they are not employees.

Where clients have used an HMRC online employment status tool called *CEST*, members should ask for a copy of the question and answer audit trail that will have been generated, and may wish to challenge some of the responses that were input to the system. For more information, check the *Tax for Freelancers* booklet.

If HMRC issue a *P2 coding notice* after being told that a new PAYE employee has been created, this can be challenged, or members can attempt to recover employee taxes and NIC as an overpayment at their next self-assessment (for next year by 31 January 2022 at the latest).

Laws on employment status are complicated and open to interpretation, so disagreements about tax status can be difficult to resolve. Members could find they are in discussion about their legal status with their clients, even if they have always worked as freelancers, and have a UTR number.

In summary:

- Download your copy of *Tax for Freelancers* from the Bectu website.
- Apply for a *Lorimer Letter*.
- Ensure that your record of work shows multiple engagers.
- If you have an accountant, get a statement indicating that, in the view of a professional, your relationships with engagers are characteristic of self-employment.
- The union is continuing discussions on this change with industry stakeholders and HMRC, and is able to offer advice directly to members whose employment status is questioned by a client, including advice on how you can recover PAYE retrospectively.

BEC-19-0022/OCT19/CS



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Tax for Freelancers has been drafted by Bectu with assistance from a tax barrister retained by the union for this purpose. Download it at bit.ly/tax-for-freelancers (members only).

Look out for members-only meetings to explain this at a number of film studios, central London and regional venues over the coming months.