



IR35 guidance for academies hiring off-payroll workers

Following advice from HMRC and discussion with School Business Managers we are providing the attached advice in the simplest terms possible.

The workers that do not require an IR35 check are:

1. TEFAT employees
2. Employees of larger companies engaged by the school – if in doubt check their company details (if they are registered at Company House as a director it is possible they are not acting as ‘employees’ and therefore need to be checked).
3. Companies providing supplies - paper, books, equipment, etc.
4. Trades people engaged on an ad hoc basis - plumbers, electricians, etc
5. Agency workers (including from teacher supply agencies) other than those who operate as a limited company, through an umbrella company or as a sole trader. You must obtain written confirmation from the agency that the worker is classed as one of their employees. Keep all correspondence and emails.
6. For agencies please send an email to them as follows and keep a copy of confirmation:

‘The Elliot Foundation Academies Trust, as a public sector organisation, must comply with the ‘Intermediaries Legislation (IR35). Can you please, therefore, confirm that all workers supplied to us by your company are paid through PAYE (i.e. they pay tax and NI as applicable)’



All others require an IR35 check. (<https://www.tax.service.gov.uk/check-employment-status-for-tax/setup>)

If they are assessed as being 'inside IR35':

1. They continue to submit invoices
2. They must have their 'deemed employment' pay (the agreed rate of pay for the work) taxed and NI paid.
3. The workers should be set up on the EPM portal (see EPM advice note, April 2017 on payroll changes)
4. VAT is not included in the amount subject to PAYE tax/NI. You should pay VAT directly to the worker's business account.
5. Workers inside IR35 are not entitled to employment rights as if they were employees
6. The academy will be subject to employer's NI.
7. Payments will be subject to Apprentice Levy charge
8. **Keep all documentation**

If you have assessed them as 'outside IR35':

1. There needs to be a verification check. This should be done by contacting the HMRC (IR35) helpline on **0300 123 2326**
2. If verification gives confirmation of status they should be treated as 'self-employed' for tax/NI purposes, if not they should be paid through EPM payroll
3. **Keep all documentation**



IR35 action chart - use this chart to clarify what IR35 actions you must take for workers continuing to provide their services through an intermediary

(With thanks to: London Borough of Hammersmith & Fulham, Royal Borough of Kensington & Chelsea, and Westminster City Council)

Type of worker	How is the service provided to your school / academy?	Who invoices you for the work?	Current treatment of the worker's pay for PAYE Tax and NI deductions	Worker's status under IR35	Action you must take under IR35
Agency workers hired via an agency as an employee of the agency	The worker is an employee of the agency.	The agency invoices your school / academy.	All pay given to the worker by the agency is processed through the agency's payroll, with PAYE Tax and NI deducted.	No IR35 assessment is required because the worker's pay is already subject to PAYE Tax/NI by the agency.	No IR35 assessment is required. Obtain written confirmation from the agency that the worker is classed as one of their employees and consequently that their pay will always be processed through the agency's payroll with PAYE Tax/NI deducted.
Limited company workers hired via an agency	The worker's service is provided through the agency by the worker's limited company	The worker's company invoices the agency and then the agency invoices your school / academy.	The worker's company decides what is paid to the worker and how it is treated for PAYE Tax/NI purposes.	An IR35 assessment is required to determine if the worker falls inside or outside IR35.	You must perform an IR35 assessment. If inside IR35: If the worker is assessed as being inside IR35 for this contract, you must write to the agency informing them that all future pay for the worker for this contract must be paid by the agency through the agency's payroll and subject to the deduction of PAYE Tax / NI. The agency will need to confirm in writing to you (and to the worker) that they will do this. The agency will still invoice you for the total amount including any VAT,



					<p>which you can continue to pay gross to the agency. If the agency fails to comply you must immediately terminate the engagement.</p> <p>If outside IR35: If the worker is assessed as being outside IR35 for this contract, no PAYE Tax/NI need be deducted from the payment. You must send a copy of the IR35 assessment result to the agency. The agency will still invoice you for the total amount including any VAT, which you can continue to pay gross to the agency.</p>
<p>Umbrella company workers hired via an agency</p>	<p>The worker's service is provided through the agency by an umbrella company.</p>	<p>The umbrella company invoices the agency and then the agency invoices your school / academy.</p>	<p>All pay given to the worker by the umbrella company is processed through the umbrella company's payroll, with PAYE Tax and NI deducted.</p>	<p>An IR35 assessment is required to determine if the worker falls inside or outside IR35.</p>	<p>You must perform an IR35 assessment.</p> <p>If pay is already subject to PAYE Tax/NI by the umbrella company: Obtain written confirmation from the agency that the worker is classed as an employee of the umbrella company and consequently that their pay will always be processed through the umbrella company's payroll with PAYE Tax/NI deducted. If this is the case, then no further action should be taken. The agency will still invoice you for the total amount including any VAT, which you can continue to pay gross to the agency.</p> <p>If pay is not already subject to PAYE Tax/NI by the umbrella company and the worker is inside IR35: If the worker is assessed as being inside IR35 for this contract, you must instruct the agency to inform the umbrella company that the worker is inside IR35 and that all future pay for the worker for this contract must be paid through the umbrella company's payroll and</p>



					<p>subject to the deduction of PAYE Tax / NI. The agency will still invoice you for the total amount including any VAT, which you can continue to pay gross to the agency. If the agency fails to comply you must immediately terminate the engagement.</p> <p>If pay is not already subject to PAYE Tax/NI by the umbrella company and the worker is outside IR35: If the worker is assessed as being outside IR35 for this contract, no PAYE Tax/NI need be deducted from the payment by the umbrella company. You must send a copy of the IR35 assessment result to the agency for onward forwarding to the umbrella company. The agency will still invoice you for the total amount including any VAT, which you can continue to pay gross to the agency.</p>
<p>Sole traders (self-employed people) or partnerships hired via an agency</p>	<p>The worker's service is provided through the agency as a sole trader (i.e. a self-employed worker) or partnership.</p>	<p>The sole trader (self-employed worker) or partnership invoices the agency, and then the agency invoices your school / academy.</p>	<p>All pay given to the worker's sole tradership or partnership by the agency is treated as self-employed income by the sole trader and declared for PAYE Tax/NI purposes by the sole trader.</p>	<p>An IR35 assessment is required to determine if the worker falls inside or outside IR35.</p>	<p>You must perform an IR35 assessment.</p> <p>If inside IR35: If the worker is assessed as being inside IR35 for this contract, you must write to the agency informing them that all future pay for the worker for this contract must be paid by the agency through the agency's payroll and subject to the deduction of PAYE Tax/NI. The agency will need to confirm in writing to you (and to the worker) that they will do this. The agency will still invoice you for the total amount, which you can continue to pay gross to the agency. If the agency fails to comply you must immediately terminate the engagement.</p>



					<p>If outside IR35: If the worker is assessed as being outside IR35 for this contract, no PAYE Tax/NI need be deducted from the payment. You must send a copy of the IR35 assessment result to the agency. The agency will still invoice you for the total amount, which you can continue to pay gross to the agency.</p>
<p>Limited company workers hired directly by your school or academy with no agency involvement</p>	<p>The worker's service is provided directly to your school/academy by the worker's limited company, with no involvement from an agency or from any other third party.</p>	<p>The worker's limited company invoices your school / academy</p>	<p>The worker's limited company decides what is paid to the worker and how it is treated for PAYE Tax/NI purposes.</p>	<p>An IR35 assessment is required to determine if the worker falls inside or outside IR35.</p>	<p>You must perform an IR35 assessment.</p> <p>If inside IR35: If the worker is assessed as being inside IR35 the worker's company will still invoice you for the total amount (which may include VAT). However, you must ensure that for this contract the invoice amount (excluding VAT) must be paid through your school's/academy's payroll and subject to the deduction of PAYE Tax/NI. The payroll net payment must be paid to the bank account of the limited company. VAT will be paid separately outside of the payroll to the bank account of the limited company. If the worker's limited company refuses to accept these conditions you must immediately terminate the engagement.</p> <p>If outside IR35: If the worker is assessed as being outside IR35 no PAYE Tax/NI need be deducted from the payment. You must send a copy of the IR35 assessment result to the worker's company. The worker's company will still invoice you for the total amount including any VAT, which you can continue to pay gross to the worker's</p>



<p>Umbrella company workers hired directly by your school or academy with no agency involvement</p>	<p>The worker's service is provided directly to your school/academy by the umbrella company, with no involvement from an agency or from any other third party.</p>	<p>The umbrella company invoices your school / academy.</p>	<p>All pay given to the worker by the umbrella company is processed through the umbrella company's payroll, with PAYE Tax and NI deducted.</p>	<p>An IR35 assessment is required to determine if the worker falls inside or outside IR35.</p>	<p>company.</p> <p>You must perform an IR35 assessment.</p> <p>If pay is already subject to PAYE Tax/NI by the umbrella company: Obtain written confirmation from the umbrella company that the worker is classed as an employee of the umbrella company and consequently that for this contract that their pay will always be processed through the umbrella company's payroll with PAYE Tax/NI deducted. If this is the case, then no further action need be taken. The umbrella company will still invoice you for the total amount including any VAT, which you can continue to pay gross to the umbrella company.</p> <p>If pay is not already subject to PAYE Tax/NI by the umbrella company and the worker is inside IR35: If the worker is assessed as being inside IR35 for this contract, the umbrella company will still invoice you for the total amount (which may include VAT). However, you must ensure that for this contract the invoice amount (excluding VAT) must be paid through your school's/academy's payroll and subject to the deduction of PAYE Tax/NI. The payroll net payment must be paid to the bank account supplied by the umbrella company. VAT will be paid separately outside of the payroll to the bank account supplied by the umbrella company. If the umbrella company refuses to accept these conditions you must immediately terminate the engagement.</p>
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					<p>If pay is not already subject to PAYE Tax/NI by the umbrella company and the worker is outside IR35: If the worker is assessed as being outside IR35 for this contract, then no PAYE Tax/NI need be deducted from the payment. You must send a copy of the IR35 assessment result to the umbrella company. The umbrella company will still invoice you for the total amount, which you can continue to pay gross to the umbrella company.</p>
<p>Sole traders (self-employed people) or partnerships hired directly by your school or academy with no agency involvement</p>	<p>The worker's service is provided directly to your school/academy by the sole trader (i.e. a self-employed worker) or partnership</p>	<p>The sole trader (self-employed worker) or partnership invoices your school / academy</p>	<p>All pay given to the worker's sole tradership or partnership is treated as self-employed income by the sole trader and declared for PAYE Tax/NI purposes by the sole trader.</p>	<p>An IR35 assessment is required to determine if the worker falls inside or outside IR35.</p>	<p>You must perform an IR35 assessment.</p> <p>If inside IR35: If the worker is assessed as being inside IR35 for this contract, the sole trader (or partnership) will still invoice you for the total amount (which may include VAT). However, you must ensure that for this contract the invoice amount (excluding VAT) must be paid through your school's/academy's payroll and subject to the deduction of PAYE Tax/NI. The payroll net payment must be paid to the bank account of the sole trader or partnership. Any VAT must be paid separately outside of the payroll to the bank account of the sole trader or partnership. If the sole trader or partnership refuses to accept these conditions you must immediately terminate the engagement.</p> <p>If outside IR35: If the worker is assessed as being outside IR35 for this contract, no PAYE Tax/NI need be deducted from the payment. You must send a copy of the IR35</p>



					assessment result to the worker. The sole trader or partnership will still invoice you for the total amount including any VAT, which you can continue to pay gross to the sole trader or partnership
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