CHANGES TO IR35 RULES THAT COULD AFFECT HOW LOCUM GPs ARE PAID

It is important that all GP practices are aware of changes to IR35 rules that take effect on 6 April.

They relate to paying workers who provide services via intermediaries (for example, although not restricted to, workers' limited companies).

What is IR35?

IR35 is an anti-tax avoidance measure introduced by the Government in April 2000. It is also known as the 'intermediaries legislation'.

Its purpose is to prevent workers from avoiding paying employee income tax and NICs (national insurance contributions) by supplying their services through an intermediary (usually a 'personal service company') and paying themselves dividends rather than as employees. The rules apply across the UK.

How does it affect locums and practices?

It is important to note that IR35 only applies where locums (or other individuals) are engaged via an intermediary. IR35 does not apply to genuine self-employed locums providing their services directly to practices.

The IR35 rules have to date required the intermediary to establish the nature of the relationship between the locum and the practice. Where an employment contract would have existed between the locum and the practice in the absence of the intermediary, the intermediary has had an obligation to pay the locum as if an employee net of tax and NIC.

IR35 changes will affect 'public sector bodies' – including general medical services and personal medical services practices and NHS trusts – who engage locums to provide services via an intermediary. Non-public sector bodies such as APMS (alternative provider medical services)providers or commercial providers that provide some out-of-hours services are not affected by the changes.

What is changing on 6 April?

Under the new rules, the responsibility for determining whether IR35 is applicable is shifting from the intermediary to the public sector body (or recruitment agency, if it uses one to engage the locum).

This means that public sector bodies – including GMS and PMS practices – and agencies will now be responsible for deducting tax and NIC from any payments made to the intermediary supplying a locum, where they deem IR35 applies. This will require additional administration by the practice for processing PAYE as well as bearing the cost of employer NICs.

If practices do not deduct tax and NICs from a locum who should have been considered to be within IR35 rules, this could result in HMRC requesting the practice pays back any taxes and NICs due as well as penalties. These taxes could be clawed back on payments as far back as 6 April 2017 when the new rules will have taken effect.

How can a practice decide whether IR35 applies to a locum?

All locums providing services via an intermediary need to be considered on a case-by-case basis – this does not mean that such locums need to automatically be paid net of tax and NICs.

In the first instance, read the BMA's **general guidance on IR35** and **employment status**

HMRC has also published useful **guidance on IR35**, and launched a new **employment status tool** for practices to determine whether any current or prospective locums would fall within the new IR35 rules.

HMRC has stated that it will stand by the result its online tool produces, unless it is based on inaccurate information.

A set of **FAQs on IR35 for locums** has also been written by BMA sessional GP committee member Matt Mayer. If you are a BMA member, the BMA can provide initial support for IR35 queries, as well as general support for members with employment issues.

To speak to a BMA adviser about IR35 please call 0300 123 1233 or email **support@bma.org.uk**

All practices should take note of these changes and look at BMA and HMRC guidance so that they pay locums in the correct manner in keeping with IR35 rules.