

Objective:

To explain the guidelines for contractor engagement in response to the extension of the off payroll working rules ("IR35") to the private sector, with effect from 6th April 2021.

To ensure CEMEX complies with its statutory obligations and to ensure that it pays tax correctly and on time. Anyone involved in engaging contractors or subcontractors for or on behalf of CEMEX must comply with this policy in full.

This document applies to the employees of CEMEX United Kingdom	CEMEX UK Off Payroll Working Rules (IR35) Policy
	Related Documents: N/A

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1. Objective and Scope

This policy explains the guidelines for contractor engagement in response to the extension of the off payroll working rules ("IR35") to the private sector, with effect from 6th April 2021.

It is important for CEMEX to comply with its statutory obligations and to ensure that it pays tax correctly and on time. Anyone involved in engaging contractors or subcontractors for or on behalf of CEMEX must comply with this policy in full.

CEMEX engages a large number of subcontractors and contractors to carry out a wide range of activities. Many of those contracts may involve the provision of a personal service to CEMEX by workers provided under those contracts. CEMEX has a statutory responsibility to assess whether or not the engagement of those workers by CEMEX falls within the scope of IR35. If so, they will be "deemed employees" of CEMEX for tax purposes.

IR35 may apply where a worker provides services to CEMEX through an intermediary. An intermediary is a party who makes arrangements for, or pays, an individual to work for a third party. The intermediary could take the form of:

- a partnership
- a limited company (known as a personal service company)

A personal service company ("**PSC**") is a type of intermediary where the worker has a 'material interest' in a company. This usually means the worker is either:

- a director of the company
- able to control more than 5% of the ordinary share capital of the company, directly or indirectly.

This policy applies where a contractor or subcontractor provides a worker to CEMEX through an intermediary and the worker will personally provide a service to CEMEX (a "CEMEX Contractor").

Depending on the way in which the contracts operate, CEMEX may be considered the "fee payer" under IR35 in relation to the engagement of a worker. If so, CEMEX could be required to deduct and account for income tax and employee national insurance contributions (NIC). CEMEX may also be liable for employer NICs. Failure to comply with the rules can lead to additional charges of penalties and interest.

Please note a reference to the term "worker" in this document is for illustrative purposes only. Deemed employment status under IR35 does not give an individual the status of a worker or employee of CEMEX for the purposes of any employment law, whether in relation to employment rights or otherwise.

This policy sets out the permitted contractual structure and processes which must be followed whenever CEMEX engages a CEMEX Contractor.

It is of the utmost importance that these processes are followed to ensure that the payroll obligations in respect of these workers are met by the CEMEX Contractors concerned and to minimise tax risks and liabilities for CEMEX arising from "deemed employees" for tax purposes.

This policy applies to all contractors and subcontractors engaged by CEMEX that operate as a limited company, partnership or that provide workers to CEMEX that are engaged through an intermediary.

IR35 does not apply if the workers performing the services in question are paid subject to the deduction (and payment to HMRC) of income tax and national insurance contributions under PAYE in full in respect of all the remuneration they receive from the performance of the contract with CEMEX, including their salary and any benefits.

This policy forms part of the measures put in place by CEMEX to prevent the facilitation of tax evasion offences by associated persons, as required by Criminal Finances Act 2017.

2. Responsibility of CEMEX Contractors

CEMEX has considered the risks associated with IR35 and has, as a matter of policy, determined that it will only contract with CEMEX Contractors who ensure that PAYE is operated in full in respect of any person who will provide services personally to CEMEX.

This is the best way to minimise IR35 risk to CEMEX.

All CEMEX Contractors must ensure that any worker that they have engaged to provide services to CEMEX is either:

1. treated as an employee on the **payroll of the CEMEX Contractor** (or the intermediary, if the two are different entities) who fully operates PAYE in respect of all salary and benefits the employee receives;
2. engaged via an **agent** of the CEMEX Contractor who fully operates PAYE under the agency rules; or
3. engaged via a **tax compliant** FCSA accredited **umbrella** company (the names and details of which are set out at Annex 1 to this policy, subject to amendment from time to time) which directly employs the workers and fully operates PAYE in respect of them.

CEMEX Contractors will be required to provide details of their arrangements with all workers providing services personally to CEMEX in order to assist CEMEX with any PAYE compliance audits, promptly upon request by CEMEX.

3. IR35 Compliance Process

In respect of every CEMEX Contractor that will be engaged (or continue to be engaged) by CEMEX on or after 6 April 2021, the following process applies:

1. The name and registered office of the CEMEX Contractor must be provided to IR35@cemex.com, for audit purposes.

2. A "CEMEX Contractor Confirmation Letter" in the CEMEX approved form must be sent to the CEMEX Contractor by CEMEX on CEMEX headed notepaper in order to notify the CEMEX Contractors of this new policy. An example of this letter is attached at Annex 2.
3. The CEMEX Contractor should sign the undertakings in the CEMEX Contractor Confirmation Letter and return it within 5 working days of receipt. A copy of the signed letter must be sent to IR35@cemex.com.
4. Unless a copy of the letter signed by the CEMEX Contractor is held on the central file, CEMEX is not authorised to make any payment to the CEMEX Contractor at any time on or after 6 April 2021 in respect of any service which may include a personal service provided by an individual.
5. In order to be authorised to supply services to CEMEX which may include a personal service, the CEMEX Contractor must also provide evidence of a type and in a form acceptable to CEMEX to demonstrate to the satisfaction of CEMEX that PAYE is operated properly and in full in respect of all payments and benefits provided to any person who will provide services personally to CEMEX under the contract. The evidence required is set out at section 4 below.
6. CEMEX may from time to time request a renewal of the PAYE undertakings set out in the CEMEX Contractor Undertaking Letter and/or further evidence of PAYE compliance as required in connection with any PAYE or other tax compliance audit carried out by CEMEX. For ongoing contracts, the PAYE compliance information should be renewed every twelve months.
7. The contract entered into by CEMEX must be in an up-to-date CEMEX approved form. An existing contractor may be required to enter into a contractual variation by way of an addendum to ensure that the respective obligations of the parties in connection with IR35 tax risk are correctly understood and properly addressed.

4. Information Required

Satisfactory evidence is required to demonstrate that all workers providing a personal service to CEMEX under a subcontract are subject to full deduction and payment of income tax and national insurance contributions in respect of payments made to them in connection with the services they supply to CEMEX.

In addition to the CEMEX Contractor Confirmation Letter referred to in section 3 above, further evidence required depends on the nature of the engagement and is as follows:

1. A CEMEX Contractor that is a PSC or that supplies a worker engaged through a PSC:

- (a) A letter from an independent accountant acting on behalf of the PSC confirming that from 6 April 2021:
 - all workers supplied by the PSC to CEMEX are employees of the PSC;
 - the workers in question are on the payroll of the PSC;

- all payments and benefits provided to the worker providing services to CEMEX in question are paid as employment income or under the employment intermediary rules and there is no commission, bonus or other benefit falling outside these rules;
 - the PSC does not engage in any tax planning arrangement in respect of its employees (e.g. by way of loan arrangements, marketed tax avoidance scheme or by contracting via any undisclosed intermediary company, whether in the UK or overseas);
 - PAYE is operated in full by the PSC in respect of income tax and national insurance contributions for all payments and benefits provided to every worker and the PSC pays employer national insurance contributions; and
 - there is no material history of failure or default in relation to tax compliance by the PSC or (so far as the accountant is aware) any of its directors.
- (b) Confirmation from the PSC that all workers supplied by the PSC to CEMEX will remain employees of the PSC and subject to PAYE as such for the full duration of the subcontract in question.
- (c) A redacted example of a payslip provided to each worker providing services under the subcontract, showing that PAYE is operated in full by the PSC on all salary and benefits provided to the worker in connection with services provided to CEMEX.

2. A CEMEX Contractor supplies a worker engaged through an agency

- (a) A letter from the agency or an independent accountant acting for the agency, confirming that from 6 April 2021:
- all workers supplied by the CEMEX Contractor to CEMEX via the agency are either employees of the agency or included on the agency payroll under the tax rules applicable to employment intermediaries;
 - all payments and benefits provided to the workers providing services to CEMEX in question are paid as employment income or under the employment intermediary rules and there is no commission, bonus or other benefit falling outside these rules;
 - the agency operates PAYE properly and in full in respect of income tax and national insurance contributions for all payments and benefits provided to every such worker and the agency pays employer national insurance contributions;
 - the agency does not engage in any tax planning arrangement in respect of its employees (e.g. by way of loan arrangements, marketed tax avoidance scheme or by contracting via any undisclosed intermediary company, whether in the UK or overseas); and
 - there is no material history of failure or default in relation to tax compliance by the agency or (so far as the accountant is aware) any of its directors.

- (b) A redacted example of a payslip provided to each worker providing services under the subcontract, showing that PAYE is operated in full by the agency.

3. A CEMEX Contractor supplies a worker engaged through an umbrella company

- (a) Confirmation that the umbrella company is tax compliant FCSA accredited umbrella company and is included on the list at Annex 1 (as updated from time to time).
- (b) A letter from the umbrella company or an independent accountant acting for the umbrella company, confirming that from 6 April 2021:
- all workers supplied by the CEMEX Contractor to CEMEX via the umbrella company are employees of the umbrella company;
 - the workers in question are on the payroll of the umbrella company;
 - all payments and benefits provided to the workers providing services to CEMEX in question are paid as employment income and there is no commission, bonus or other benefit treated differently (e.g. by way of loan);
 - the umbrella company operates PAYE properly and in full in respect of income tax and national insurance contributions for all payments and benefits provided to every such worker and the umbrella company pays employer national insurance contributions;
 - the umbrella company does not engage in any tax planning arrangement in respect of its employees (e.g. by way of loan arrangements, marketed tax avoidance scheme or by contracting via any undisclosed intermediary company, whether in the UK or overseas); and
 - there is no material history of failure or default in relation to tax compliance by the umbrella company or (so far as the accountant is aware) any of its directors.
- (c) A redacted example of a payslip provided to each worker providing services under the subcontract, showing that PAYE is operated in full by the PSC.

The information referred to above should be sent to ir35@cemex.com before the commencement of the contract. For contracts already in force, this information should be received by CEMEX before the first payment can be made to that CEMEX Contractor on or after 6 April 2021.

5. Non-compliance with this Policy

If a CEMEX Contractor fails to comply with the requirements of this policy, they will no longer be able to supply their services to CEMEX and any such contracts or engagements shall be terminated with immediate effect.

CEMEX may be subject to enquiries from HMRC to check whether it has met its obligations in connection with IR35. This could take place as a separate enquiry or investigation or as part of a routine audit.

In addition, if CEMEX becomes aware that workers have been engaged by CEMEX in circumstances where IR35 is relevant and CEMEX has not complied in full with its statutory obligations, CEMEX will be required to make a voluntary disclosure to HMRC.

If following a voluntary disclosure or an enquiry, HMRC determine that IR35 applies, CEMEX will be required to pay income tax, employer and employee national insurance contributions on all payments made for workers who meet the relevant tests to be treated as “deemed employees” by HMRC.

Interest and penalties may apply in addition to the tax due. Further penalties can be charged as a result of failure to make correct returns.

If anyone at CEMEX knowingly fails to comply with this policy (and in particular if a worker is paid without deduction of tax when it is clear that such deduction should be made), both CEMEX and the individuals concerned may be convicted of offences of or relating to fraud.

The amount of tax at stake is potentially very large and CEMEX may not be able to recover this tax successfully from the CEMEX Contractor.

In addition, whether or not the engagement of the worker falls within the IR35 tests, CEMEX could also be liable for penalties for failure to comply with the requirement to make a status determination in respect of any potential IR35 worker and to take reasonable care in doing so.

Failure to comply with IR35 increases the risk of additional enquiries and investigations by HMRC and could damage the standing of CEMEX as a tax compliant business.

Annex 1

FCSA ACCREDITED UMBRELLA COMPANIES

<u>Brand Name</u>	<u>Company Name</u>	<u>Company Number</u>	<u>Company Address</u>
Advance	Advance Group Holdings LTD	09607008	2 Bretton Hall Offices Chester Road, Bretton, Chester, Cheshire, CH4 0DF
Black Diamond	Black Diamond Accountancy Services Limited	06696360	Jubilee House, East Beach, Lytham St. Annes, Lancashire, FY8 5FT
Carrington Umbrella LTD	Carrington Umbrella LTD	07816859	Birchin Court, 20 Birchin Lane, London, EC3V 9DU
Champion Contractors	Champion Consulting Limited	01580135	Champion Contractors, 1 Worsley Court, High Street, Worsley, Manchester M28 3NJ
Clipper Contracting Group Ltd	Clipper Contracting Group Ltd	06631601	1 Widcombe Street, Poundbury, Dorchester, Dorset, DT1 3BS
Contractor Umbrella	Contractor Umbrella Limited	04324081	Unit 36 Silk Mill Industrial Estate, Brook Street, Tring, Hertfordshire, HP23 5EF
Crest Plus Operations LTD	Crest Plus Operations Limited	04620624	Suite A1, The Quadrant Mercury Court, Chester West Employment Park, Chester, Cheshire, CH1 4QR

Danbro	Danbro Holding Limited	06537773	Jubilee House, East Beach, Lytham St Annes, Lancashire, FY8 5FT
Focused	Focused Consulting Limited	05261541	Mansion House, Manchester Road, Altrincham, Cheshire, WA14 4RW
ForeTwo Group LTD	ForeTwo Group Limited	10867179	20 St James' Business Centre, Wilderspool Causeway, Warrington, WA4 6PS
Generate FS LTD	Generate FS LTD	08245483	Unit 3 New Concordia Wharf, Mill Street, London, SE1 2BB
Giant Group PLC	Giant Group PLC	03093787	7th Floor 3 Harbour Exchange Square, London, E14 9TQ
Global Challenge Umbrella Services LTD	Global Challenge Umbrella Services LTD	10847106	Unit 8, Conqueror Court, Staplehurst Road, Sittingbourne, Kent, ME10 5BH
ICS Ltd (Independent Contractor Services Ltd)	Independent Contractor Services Limited	04380099	Lancaster Business Park, 2 Mannin Way, Lancaster, LA1 3SU
JSA Services LTD	JSA Services Limited	02407547	4th Floor Radius House, 51 Clarendon Road, Watford, Hertfordshire, WD17 1HP
Key Payroll Ltd	Key Payroll Ltd	SC432987	18 Seaward Place, Glasgow, Scotland, G41 1HH

Liberty Bishop	Liberty Bishop Contracting Limited	10434993	Suite 1, 2nd Floor Keynes House, The Priory, Tilehouse Street, Hitchin, Hertfordshire, SG5 2DW
	Liberty Bishop Contractor Services LTD	06959609	
	Liberty Bishop (CIS) LTD	06767446	
	Liberty Bishop Accountancy Services Limited	07212211	
Liquid Friday	Liquid Friday Limited	05887477	The Port House Marina Keep, Port Solent, Portsmouth, PO6 4TH
	Liquid Friday Accounting Limited	09507293	
Mortimer Childe Ltd	Mortimer Childe Ltd	8885617	53 High Street, Cleobury Mortimer, Kidderminster, DY14 8DQ
MyPay	MyPay LTD	06425704	Sovereign House, Stockport Road, Cheadle, SK8 2EA
	MyPay PSC LTD	10022112	
NASA Consulting LTD	NASA Consulting Limited	05764568	Tower House, Fairfax Street, Bristol, BS1 3AG
Numbermill LTD	Numbermill Limited	08884038	2 Greenhill Crescent, Watford, WD18 8AH

One	Brookson Limited	03128631	Brunel House 340 Firecrest Court, Centre Park, Warrington, WA1 1RG
Orange Genie	Orange Genie Cover Limited	04896166	3rd Floor Buckingham House, Buckingham Street, Aylesbury, Buckinghamshire, HP20 2LA
Orbital Payroll Group LTD	Orbital Payroll Group Limited	08837446	Digital Media Centre, County Way, Barnsley, South Yorkshire, S70 2JW
Parasol LTD	Parasol Limited	03940716	Optionis House 840 Ibis Court, Centre Park, Warrington, Cheshire, WA1 1RL
Pay Stream	Pay Stream Accounting Services Limited	07598955	Mansion House, Manchester Road, Altrincham, Cheshire, WA14 4RW
Payments Pro Ltd*	Payments Pro Limited	10763957	20 Bunhill Row, London, EC1Y 8UE
	Payments Pro 2 Limited	10605032	
Pendragon Consultancy	Pendragon Consultancy Limited	11330591	15/17 High Oak Business Centre, Gentlemensfield, Westmill Road, Ware, Herts, SG12 0EF
Sapphire Accounting Ltd	Sapphire Accounting Limited	08612257	Suite 1, Deanway Technology Centre 2 Wilmslow Road, Handforth, Wilmslow, SK9 3HW

Smartwork.com Ltd	Smartwork.com Ltd	04207299	Whitefriars, Lewins Mead, Bristol, BS1 2NT
Trafalgar	Trafalgar Accounting Solutions LTD	04158642	2 Gallery Court, 1-7 Pilgrimage Street, London, SE1 4LL
Umbrella.co.uk	Umbrella-Company Ltd	06969639	Bollin House, Bollin Walk, Wilmslow, Cheshire, SK9 1DP
Unified Payroll	Unified Payroll LTD	09692858	16 Hemmells, Basildon, Essex, SS15 6ED
We Contract	We Contract LTD	08635529	3rd Floor Watergate Buildings, New Crane Street, Chester, CH1 4JE

Annex 2

FORM OF CEMEX CONTRACTOR CONFIRMATION LETTER

The Directors

PSC/Non-Neuven Labour Providers Name

First Line of Address

Second Line of Address

Town/City

Post Code

Date

Dear *PSC/Non-Neuven Labour Providers Name*

Forthcoming changes to Off Payroll Working Rules (IR35)

As you will no doubt be aware, it is expected that the off payroll working rules ("IR35") will be extended to the private sector from 6th April 2021. This change will place the responsibility for assessing whether IR35 will apply on the end user of services, in this case CEMEX, where an individual provides services through an intermediary and the individual personally performs those services. Where IR35 applies, the end user will be required to decide whether the individual would be an employee if the end user contracted directly with them (referred to as "deemed employment status").

CEMEX engages with a large number of contractors and has been obliged to update its contractor engagement policy to minimise the risks to its business associated with the changes to IR35.

Having carried out a review, CEMEX has determined that, going forward, we will only contract with providers who ensure that PAYE is operated in full in respect of any person who will provide services to CEMEX. The payroll obligations may be met either by:

- the contractor or (where different) the personal service company directly employing the workers;
- the contractor engaging them via an agency that fully operates PAYE under the agency rules; or
- by the contractor using one of the FCSA accredited umbrella companies listed in the Schedule to this letter. If an umbrella company is used, this is permitted on the basis that the companies listed in the Schedule will directly employ the workers and will operate PAYE themselves.

CEMEX now request details of your arrangements to ensure that the workers in question are properly included on payroll and that CEMEX does not have additional obligations under IR35. I ask that you assist and cooperate fully with us during this process. In order to continue to pay you from 6 April onwards, we will need to receive each of the following by **26 March 2021**:

1. Your name and registered office for audit purposes.
2. A letter from your accountant confirming that from 6 April 2021:
 - a. all workers supplied by you to CEMEX are your employees;
 - b. the workers in question are on your payroll;
 - c. all payments and benefits provided to the workers providing services to CEMEX in question are paid as employment income or under the employment intermediary rules and there is no commission, bonus or other benefit falling outside these rules;
 - d. you do not engage in any tax planning arrangement in respect of your employees (e.g. by way of loan arrangements, marketed tax avoidance scheme or by contracting via any undisclosed intermediary company, whether in the UK or overseas);
 - e. you operate PAYE in full in respect of income tax and national insurance contributions for all payments and benefits provided to each worker and you pay employer national insurance contributions; and
 - f. there is no material history of failure or default in relation to tax compliance by you or (so far as the accountant is aware) any of your directors.
3. Confirmation from you that all workers supplied by you to CEMEX will remain your employees and subject to PAYE as such for the full duration of the contract with CEMEX.
4. A redacted example of a payslip provided to each worker providing services under the contract, showing that PAYE is operated in full by you on all salary and benefits provided to the worker in connection with services provided to CEMEX.

Please refer to the attached CEMEX UK Off Payroll Working Rules (IR35) Policy for further information.

Where the necessary contractual wording for IR35 is not already in place, CEMEX will also require you to sign an addendum to your existing contract for the supply of services. Further details relating to this are to follow.

To continue to be authorised to supply services to CEMEX in the future and to receive payment for that supply, please sign and return the below declaration within 5 business days of receipt of this letter

confirming that you:

- have read and understand the contents of this letter and the CEMEX UK Off Payroll Working Rules (IR35) Policy; and
- will comply with our requirements as we work to implement this important new legislation.

Please return a copy of this letter with the completed declaration, the required information together with any queries to ir35@cemex.com

Company _____ Date _____

Name _____ Position _____

On behalf of Cemex

Enc: CEMEX UK Off Payroll Working Rules (IR35) Policy