



Search Consultancy Limited

IR35 Implementation Check-list for end-clients

Steps to be taken ahead of IR35 changes which take effect on 6th April 2020



This checklist should be used in conjunction with a basic understanding of the forthcoming legislation. When drafting the checklist, consideration has been given to the proposed legislation as laid out in HMRC's policy paper and consultation document published on 5th March 2019. The checklist has then been updated, where necessary, to include details of the draft legislation published on 11th July 2019.

Although the legislation is not yet finalised, it is not anticipated that it will change markedly from the 11th July draft. End-clients that engage a number of Personal Service Companies are advised to give their position regarding IR35 full consideration ahead of the publication of the final legislation.

	Section	Action	Complete
1.	<u>The Legislation</u> Understand the forthcoming legislation and what it means to your company. See section 11. for the following key definitions: <ul style="list-style-type: none"> • Personal Service Company (PSC). • What is IR35? • Exemption of small companies/organisations. 		<input type="checkbox"/>
2.	<u>Personal Service Companies</u> In what areas of your company do you use Personal Service Company ("PSC") contractors? Those might be: <ul style="list-style-type: none"> • PSCs engaged directly. • PSCs engaged via recruitment agencies (ask agencies for full details). • PSCs engaged via consultancies (see section 4). 		<input type="checkbox"/>
3.	<u>What information do you need to ascertain about those PSCs engaged by your business?</u> <ul style="list-style-type: none"> • Name of PSC (and contractor). • Engaged directly or via a recruitment agency (name of agency). • Are any PSCs engaged via a consultancy business (see section 4)? • Role (and department). • PSC pay rate (hourly, daily or weekly). • If via agency, also note rate charged by agency. • When did contractor start working for your company as a PSC? • When does the existing contract/assignment terminate? Existing contracts should all terminate pre 6th April 2020. • What level of importance to the business does the PSC have? (Suggest that you develop criteria and ranking levels of business importance). • Put in place a process for ensuring that any new PSCs working in your business are immediately communicated to you. The information detailed above must also be gathered for each of these new PSCs. • Ensure the contract/assignment for new/existing PSCs does not extend beyond 5th April 2020. 		<input type="checkbox"/>

	Section	Action	Complete
4.	<p><u>PSCs assigned via consultancy businesses</u></p> <p>In circumstances where consultancy businesses are providing services to your company which involve the supply of labour, it is important to understand the nature of the supply that the consultancy business is providing and how they are invoicing for their services.</p> <p>To assess this, you will require a copy of the contract between your company and the consultancy business and details of how the consultancy business invoices for its services.</p> <p>If the consultancy business invoices your company by the day or hour, then this is a good starting point for identifying a potential supply of labour.</p> <p>Essentially, the question you need to ask yourself is "Does this represent a supply of services or a supply of labour?" If it is a supply of labour and the PSC is supplying its labour to the consultancy business, the new IR35 changes are likely to apply.</p>		<input type="checkbox"/>
5.	<p><u>Initial assessment of the IR35 status of all those PSCs identified</u></p> <p>Having identified all of the PSCs engaged by your company, their role etc. and how important they are to your company (see section 3), the next stage is to endeavour to assess their IR35 status.</p> <p>Depending upon how many PSCs are engaged in your company, it may help to carry out an initial assessment, perhaps categorising them as follows:</p> <ul style="list-style-type: none"> • The PSC and role will not be engaged beyond 5th April 2020 so an initial assessment is unnecessary. • The contractor/ role is very likely to be caught by IR35. • The contractor/role is very unlikely to be caught by IR35. • It's likely to be borderline whether the contractor/role is caught by IR35. 		<input type="checkbox"/>
6.	<p><u>More detailed assessment of the IR35 status of all those PSCs identified</u></p> <p>It is important to note that all PSCs who are engaged with your company beyond 6th April 2020 will need to have their IR35 status <u>fully assessed</u>. This final assessment will need to be carried out diligently and with "reasonable care", probably during the weeks leading up to 6th April 2020. The assessment will need to be carried out using HMRC's CEST (Check Employment Status for Tax) tool <u>and/or</u> other credible assessment tools.</p> <p>HMRC has developed the CEST tool to assist end-users with the status assessment exercise. However, it is not a requirement that the CEST tool must be used in reaching your conclusion.</p> <p>Your company should consider what approach they will be taking with regards to IR35 status assessments going forward. It may be that, as well as HMRC's CEST tool, your company would like to partner with a third party assessor to determine IR35 status. Search Consultancy can assist with this exercise.</p> <p>In the meantime, you may wish to carry out an initial assessment using only HMRC's CEST tool. Please note that HMRC has indicated that this tool will be enhanced/improved over the next few months (certainly, prior to April 2020).</p>		<input type="checkbox"/>

	Section	Action	Complete
	<p>It is recommended that, before operating the CEST tool in a live environment, you have a few test/trial runs in order to gain an understanding of how the assessment tool operates and what kind of questions you will need to answer.</p> <p>It is important when completing CEST that all responses accurately reflect the role being fulfilled by the PSC. Any inaccurate responses may invalidate the ultimate conclusion reached by the CEST tool.</p> <p>Note that the results of the work you do using CEST are not retained and are therefore not attributable to any specific PSC / contractor. For this reason, it is recommended that, if you wish to retain the results of the CEST assessment, you take a print before exiting the tool.</p> <p>Remember, at this stage, you are seeking to understand where, come April 2020, you might have issues with existing PSCs in your company. By identifying them, at this early stage, you are far better able to consider, in a timely fashion, how you might address those issues.</p> <p>Your company will still need to carry out a final, formal assessment for each PSC engaged in your business in the weeks running up to 6th April 2020.</p>		
7.	<p><u>Strategy for addressing specific IR35 issues</u></p> <p>This step in the checklist involves outlining a specific approach to be taken with each individual PSC that has been identified.</p> <p>It is suggested that you start with those PSCs identified in step 3 above as of high level of importance to your business.</p> <p>For those identified as of high level of importance, the next step is to recognise whether your initial employment status assessment (see 5 and 6 above) categorises them as likely to be inside or outside IR35.</p> <p>In circumstances where, <u>using reasonable care</u>, you believe that they lie outside IR35 (i.e. no employed status exists) then you can place this PSC/role in a low risk category from a business continuity perspective recognising, however, that you will need to undertake one final, formal assessment early in 2020.</p> <p>For those PSCs where, <u>using reasonable care</u>, you believe that they lie inside IR35 (i.e. an employed status exists) it is important to understand the potential impact of that determination on business continuity and then to consider your company's intended approach to the matter. Again, you will need to undertake a final, formal assessment early in 2020.</p> <p>Where the PSC is deemed to lie inside IR35, the likely areas of impact are:</p> <ul style="list-style-type: none"> a) Additional employer's national insurance costs of up to 13.8% of the PSC's gross pay. This additional cost may well have to be absorbed by the company. In addition, Apprenticeship Levy costs at 0.5% of gross pay will also need to be borne as may employer's pension contributions at 3% of pensionable gross pay. b) The PSC/contractor will see their earnings become subject to tax (PAYE) and employee's national insurance. <p>This may well result in their net pay (i.e. 'take-home pay') reducing by between 20% and 30%.</p> <p>It should, however, be noted that when tax they would have previously paid via their PSC (corporation tax, tax on dividends, PAYE and national insurance) is taken into account, the percentage reduction in net pay is markedly lower.</p> <p>It is possible (likely?) that the PSC will seek an increase in their gross pay to offset the increased tax/NI paid. You will need to decide in what circumstances your company might consider a pay increase. If an agency is involved in the supply chain, they will need to be included in any pay rate discussions/considerations.</p>		<input data-bbox="1430 770 1469 808" type="checkbox"/>

	Section	Action	Complete
	<p>Consideration also needs to be given as to whether, having determined that the contractor is inside IR35, changes can be made to the working practices that might place the contractor outside IR35. This approach can also be adopted with those PSCs which, when assessed for IR35, fell into the borderline category.</p> <p>Similarly, consideration should be given as to whether the supply of labour provided by the PSC can be converted into a supply of services or deliverables (normally where payment is not tied to time worked). This is often referred to as a Statement of Work ("SOW") arrangement.</p> <p>The conversion of a supply of labour into a supply of services/deliverables is likely to be feasible in a relatively small number of scenarios. It will require the involvement of all parties (end-client, PSC and agency), changes in business practices, changes to contractual arrangements and, amongst other things, the PSC taking on some financial/commercial risks.</p> <p>You are advised to involve your internal legal, HR and commercial experts when considering SOW possibilities.</p>		
	<p>8. <u>Initial Review of all PSCs is now completed</u></p> <p>Once the <u>initial</u> review of all PSCs engaged within your company has been completed, you should feel comfortable with the following:</p> <ul style="list-style-type: none"> a) You are aware of all PSCs engaged in the company and whether they are engaged directly or via an agency (or potentially, via a consultancy). b) You should be aware of (and potentially have ranked or graded) the business importance of each and every PSC. c) You should have completed an initial employment status assessment (as a minimum using HMRC's CEST tool) to determine whether each PSC/contractor is likely to be inside or outside IR35. d) For those deemed inside IR35 or borderline, (particularly those deemed important to the company), is there an alternative way that the service could be provided which could take them outside IR35? e) For those initially deemed both inside and outside IR35 (or on the borderline), a final assessment will be required before 6th April 2020. 		<input type="checkbox"/>
	<p>9. <u>Ongoing Employment Status Assessment Process</u></p> <p>With effect from 6th April 2020 (in fact, probably a few weeks beforehand) your company needs to have in place a process to deal with any employment status assessments for PSCs. This process will be necessary for all PSCs engaged in the business as at 6th April 2020 but will also be required for all PSCs newly engaged in the company after that date.</p>		<input type="checkbox"/>

	Section	Action	Complete
	<p>That process will need to include:</p> <p>a) Identifying a role likely to be filled by a PSC <u>before</u> the role is advertised.</p> <p>b) Assessing that role as to its likely employment status (i.e. inside or outside IR35) <u>before</u> it is advertised and, in all likelihood, disclosing that status when it is advertised.</p> <p>c) Recognising that, after an advertised role is filled, it <u>may</u> be necessary to undertake the IR35 assessment again with knowledge of the skill level of the contractor who is ultimately engaged in the role.</p> <p>d) Deciding exactly how your company will determine the employment status of a role/contractor.</p> <ul style="list-style-type: none"> • Will CEST be used in isolation? • Will CEST be augmented by a further third party review of the status? • Will CEST be discarded and an alternative method of review used? <p>Note: It is important that a robust and diligent assessment process is implemented. The company has a legal responsibility to ensure that it undertakes this status assessment exercise with 'reasonable care.'</p> <p>e) The documentation supporting the ultimate status assessment must be provided to the contractor/PSC and, if relevant, to the agency. This is to enable all parties in the supply chain to understand how your company has reached its status assessment (and, potentially, to challenge it - see (g) below).</p> <p>f) A process for communicating the status assessment and the supporting documentation down the supply chain must be introduced. That communication must take place in a timely manner.</p> <p>g) The company will be required to put in place a process which will enable any PSC/contractor who feels their employment status conclusion is incorrect, to appeal that decision. The government has indicated that it will legislate to set minimum requirements for a "status disagreement process." Government believes that this will ensure a PSC/contractor can expect the same treatment regardless of which client they engage with. The client will be required to respond to representations made by any PSC/contractor that disagrees with their status determination</p> <p>h) Any PSCs deemed outside IR35, should be re-assessed at a point (perhaps 3 months) into the assignment to ensure that the original determination still applies.</p>		
10.	<p><u>Other Considerations</u></p> <p>Consideration will also need to be given to the following factors:</p> <p>a) To what extent do any contracts between your company and agencies supplying contractors/PSCs need to be amended?</p> <p>b) Going forward, to what extent does your company wish to have visibility of its staffing supply chain? End-client companies are becoming increasingly vulnerable to short-comings (particularly in the tax arena) in such supply chains. A robust process designed to provide comfort as to supply chain integrity is recommended.</p>		<input type="checkbox"/>

	Section	Action	Complete
	<p>c) It is important to appreciate at that where a contractor is deemed 'inside IR35', they may elect to become an employee of the agency or of an umbrella company rather than be paid (under deduction of Tax/Ni) through their PSC. In those circumstances it is possible that the Agency Workers' Regulations (AWR) may apply. This could have implications for your company in areas such as pay parity and holiday entitlement.</p>		
11.	<p><u>Key Definitions</u></p> <p>a) Personal Service Company (PSC).</p> <p>These are also known as limited company contractors. The generally accepted definition of a PSC is a limited company that typically has a sole director (being the contractor) who owns most or all of the shares. The contractor's PSC generally supplies services to end-clients either directly or via an agency.</p> <p>b) What is IR35?</p> <p>IR35 legislation requires that an assessment of whether work done by a contractor operating through a PSC falls "inside" or "outside" IR35 be completed. Using certain well-established criteria such as Mutuality of Obligation, Control, Right of Substitution and Business Risk, the assessment seeks to determine whether the contractor is effectively employed (inside IR35) or self-employed (outside IR35) for tax purposes, whilst in a particular role/assignment.</p> <p>Historically, it has been the PSC itself that was responsible for carrying out this assessment. With effect from 6th April 2020, responsibility for carrying out the IR35 assessment transfers to the end-client.</p> <p>c) Exemption of small companies/organisations.</p> <p>The draft legislation indicates that it is the intention to exempt small end-client organisations from the new legislative changes.</p> <p>The qualifying conditions for a small company/organisation are met in a year in which it satisfies <u>two or more</u> of the following requirements:</p> <ul style="list-style-type: none"> • Annual turnover - not more than £10.2 million. • Balance sheet total - not more than £5.1 million. • Number of employees - not more than 50. <p>A company/organisation will cease to be small if they exceed two or more of the above criteria for two consecutive years.</p> <p>In the case of unincorporated organisations there will be a simplified test to determine a small company/organisation. The test will be based solely on annual turnover which should not be more than £10.2 million. The two year rule referred to above will not apply.</p>		<input data-bbox="1428 504 1468 548" type="checkbox"/>