

THE HISTORY OF IR35 AND WHAT IS CHANGING

WHAT IS IR35

The 'Intermediaries Legislation' or as most people have come to know it, IR35, is a piece of tax legislation that was first introduced in 2000 with the intention of stopping what is referred to as 'disguised employment'. In short, it was designed to stop contractors whose working arrangement appears like employment but who work via a PSC (personal service company) and thereby avoiding tax.

The legislation currently places the obligation for ensuring the right tax is paid solely on contractors. This can mean that the HMRC levy significant fines if they believe a contractor has made an incorrect determination. There have been several high-profile cases where this has happened, most notably television presenter Lorraine Kelly, who managed to successfully appeal the decision. But it caused much stress and cost a lot of money to defend, which the average contractor would not be able to fund so easily.

WHY IS THERE TO BE A CHANGE AND WHEN WILL IT COME INTO FORCE?

New rules regarding IR35 in the public sector, came into force on 6th April 2017. This was largely in part down to some stories in the press around high profile contractors, but also due to the Exchequer concerned about falling working tax revenues. Last year in the Budget, then Chancellor, Phillip Hammond, announced that these rules would be widened to incorporate the private sector from April 2020, following a consultation period.

That consultation period has now resulted in final draft legislation being published.

WHAT IS THE LEGISLATION, IN A NUTSHELL?

Essentially the legislation now states that responsibility for deciding the IR35 status of contractors rests with the end client, a change which will also see them carry the IR35 liability for incorrect decisions.

In short, the contractor can no longer make the determination.

WHAT HAS BEEN THE IMPACT ON THE PUBLIC SECTOR?

There have been various reports following the implementation of this change within the public sector (this also extends to publicly funded bodies, such as Channel 4 as well as traditional public sector bodies such as central government and local councils).

Some organisations have sought to mitigate any issues by placing contractors within IR35 who technically shouldn't be there, and there has been a reduction in rates paid in places in order to offset any tax liabilities. However other reports suggest that there has been little impact.

However, what is true is that working inside of IR35 is will cost contractors more, up to 30% in some cases, than they would have to pay if they are considered to be working outside of it. But whilst they must pay the same costs as permanent employees, they do not receive the same benefits. As a result, there are conversations taking place across these organisations as to how this can be addressed.

DOES THIS MEAN CONTRACTORS ARE GOING TO BE POORER OR ORGANISATIONS WILL HAVE TO HIRE PEOPLE INSTEAD?

We do not believe that there should be widespread panic. There is every indication that IR35 reform can be perfectly managed with limited impact on the contracting and flexible labour markets. As an organisation, we support the government in making sure that anyone who is unfairly avoiding tax should pay what is right.

However, we do not believe that the scale of this issue is anything like what has been discussed in some parts of the media. Given the changing nature of work and the reliance of the UK economy on this type of workforce, companies will still need to be able to engage contractors outside of IR35, and there is no reason to suspect that this should change.

The legislation merely shifts the onus onto the end client, although there may be some tax implications. Often when new legislation comes out people look to see how they can work around it. We believe that it is possible to work within it, embrace it and make it work for you.

WHAT NEXT?

We will be providing a range of guides and other support materials for you over the coming weeks. We would simply say at this stage don't panic. There is plenty of time and we will support you through it.

Sign up to receive our IR35 updates by emailing IR35@pioneer-search.com and follow us on LinkedIn for all news, guides and other ways to access information.

