

IR35 – The New Rules

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25th February 2020

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Topics Addressed

- Employment Status issues
- The background IR35 structure
 - No change?
- IR35 provisions already in place
 - The Public Sector
- IR35 changes planned for 6th April 2020
 - Large and Medium-sized private sector companies
- Summary and actions

Employment Status

- An individual – possibly a sole-trader
- Providing services
- Are they eligible to be “self-employed”?
- Or should they be on the payroll?
- Not simply a matter of choice...
- ...but a consequence of the facts of the engagement

Key Considerations: Employment Status

- Mutuality of Obligation
- Substitution
- Financial Risk
- Control
- Number of Assignments
 - And does it “look like a business”?

Examples

- Handouts provided
 - Window Cleaner
 - Software Engineer
 - Consultant
- What do you think is the Employment Status in each case?

Other Considerations: Employment Status

- Directors almost never qualify!
- None of the indicators is enough on its own
 - Need to take an overall view
- Person or organisation which is paying is at risk
 - If HMRC establish that self-employment is wrong...
 - ...they will treat the payments as net pay...
 - ...gross it up for tax and NI and calculate on the gross, and...
 - ...charge interest and penalties!!!

Application of “Classical” IR35

- An individual
- Provides services through a company (the PSC)
- Possibly via an agency
- To another organisation
- And the fees from the engagement are not all subjected to PAYE (typically paid instead as dividends)
- An assessment as to whether or not IR35 applies must be made
- By the PSC

Scenarios



How do we decide if IR35 applies?

- Imagine the PSC is removed from the chain
- Would the individual be eligible to be treated as self-employed?
- If not, then IR35 applies to the engagement
- It is called a “relevant engagement”
- It is important to note that the criteria for making this “in or out” decision-making have not changed and will not change!

Consequences of being “inside” IR35

- All the income from any relevant engagement
- Less:-
 - 5% Administration allowance
 - Anything already paid as salary or pension for the individual
 - Any “wholly, exclusively and necessarily” incurred expenses
- Is subject to a “Deemed Payment” and...
- ...PAYE and NI is calculated on this amount

IR35 and the Public Sector

- Changed 6th April 2017
- If the “end client” is in the public sector (NHS, Local and National Government, state schools etc)
- Responsibility is added...
- ...and imposed on the end client **and** any agency to:
 - Assess whether IR35 applies to the engagement, and...
 - ...if so, deduct and pay over the tax

Status Determination Statement (SDS)

- The ultimate client must make an assessment as to whether or not IR35 applies to the engagement
- Having done so, it must issue a Status Determination Statement...
- ...to the PSC and any agency in the chain
- The SDS gives its reasoning and conclusion
- Deductions are then made in accordance with the SDS

How does it work?

- The PSC raises an invoice for fees of (say) £1,000
- Adds VAT (if appropriate)
- The paying company (or agency) will calculate PAYE tax and NI on £1,000
- This will be withheld when settling the invoice...
- ...and remitted to HMRC by the end client or agency
- The PSC will be able to treat the amount deducted as a payment on account of PAYE

Extension to the Private Sector

- With effect from 6th April 2020 (assuming no last-minute changes)
- Same approach will apply to end clients which are Large and Medium-sized private companies and groups
- To avoid this, end client must be Small
- Turnover \leq £10.2m, BS total \leq £5.1m, employees \leq 50
- Can break one but not two of these limits
- Approach will be the same as for the Public Sector

If the End Client is Small?

- Does IR35 ever apply?
- Yes!
- The responsibility of determining whether the engagement is inside or outside IR35...
- ...continues to fall with the PSC as at present

Summary

- Employment Status is a very grey area
- An assessment is required for each and every engagement
- HMRC make the CEST tool available – but it's not very reliable
- The calculations can be challenging for the end client, the agency and the PSC
- Talk to Richardsons – we are here to help!

Thank You

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