

Select 2020

Four weeks and counting – Are you ready for IR35 changes?

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Four weeks and counting – Are you ready for IR35 changes?

- Background – the existing approach
- Where we are going to – the changes coming into force in April
 - On the basis of the draft legislation published in July 2019/ draft HMRC guidance
- Key factors when considering employment status
- Next steps and some alternative approaches

At the outset...

- Reforms obviously controversial
- Review promised during election campaign
 - But when announced, only about "smooth and successful implementation"
 - No wholesale delay
 - But confirmation that only applies to payments made in respect of services provided on or after 6 April 2020
- Review finished mid-February, minor changes announced last week

At the outset...

- Changes apply to "medium and large" service recipients
 - Only "small" if meet two or more of following conditions
 - Annual turnover < £10.2 million
 - Balance sheet total < £5.1m
 - 50 or fewer employees
- Session focusses on situation where there is a direct relationship between client and intermediary and all parties in the UK
 - More complex where more entities in the contractual chain/ international

Background

IR35 in the private sector – existing position

- Introduced to tackle perceived tax avoidance
 - Workers contract through intermediary (usually a PSC)
 - Reduce employee income tax and NICs by paying worker through dividends
- Intermediary (ie PSC) liable for employee tax and NICs if
 - Individual personally performs services for a client
 - Services provided through arrangements involving an intermediary
 - Individual would have been an employee for tax purposes if engaged directly by the client

IR35 in the private sector – current position

- Intermediary responsible for assessing whether individual would be employee
- Client not at risk if intermediary makes incorrect assessment
 - HMRC will proceed against PSC
- Government view – compliance with IR35 inconsistent
- So extending rules for public sector clients to private sector from April 2020

The new IR35 rules

IR35 in the private sector – position from April 2020

Carry out employment status determination using "reasonable care"



Notify worker and next party in chain of outcome



Respond to any appeal by worker within 45 days



Deduct employee tax and NICs and pay employer NICs and apprenticeship levy if IR35 applies

IR35 in the private sector – position from April 2020

- Client responsible for assessing whether IR35 applies ("status determination")
 - Has to determine whether individual would be an employee if engaged directly
 - Must take "reasonable care" in coming to the conclusion
 - Acting in a way that "would be expected of a prudent and reasonable person in the client's position"
- If do not make a status determination, or do so without reasonable care
 - Payments to intermediary treated as earnings from employment by the client

IR35 in the private sector – position from April 2020

- If IR35 applies
 - Responsible for deducting tax and NICs from payment to PSC (if client pays the intermediary)
 - And for employer NICs and apprenticeship levy on fees
 - In chain scenario, entity above the PSC (the "deemed employer") normally responsible for deducting tax and NICs
 - HMRC can pursue up the chain if deemed employer fails to deduct tax/ NICs
- Have to provide status determination statement to individual and next party in chain (PSC where direct contractual relationship)
 - Saying whether IR35 applies or not, with reasons for conclusion

IR35 in the private sector – position from April 2020

- Worker has right to challenge status determination
- Client has 45 days from receiving challenge to
 - Confirm that has considered representations and original decision stands, with reasons
 - Issue new status determination and withdraw the original
- Failure to respond within 45 days means payments to intermediary treated as earnings from an employment by the client

Assessing employment status

Assessing employment status – personal service

- Does worker have to provide services personally?
- No personal service, no employment
 - Particularly where worker has an unqualified right of substitution
- Existence of right more important than whether exercised
 - Providing that right genuine and not a sham
 - Does it make sense in the overall context?
- Worker must engage and pay the substitute

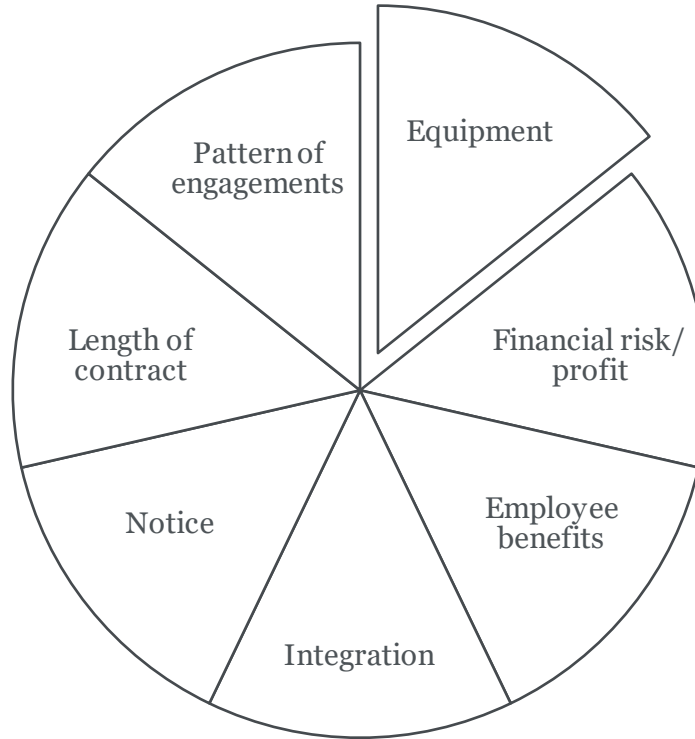
Assessing employment status – control

- Can engager direct what, where, when, how?
- No control, no employment
- Existence of right more important than whether it is exercised
 - Particularly where dealing with skilled worker
- Can worker be directed to perform other tasks?

“The right of an engager to exert control over a worker is a strong pointer towards employment.”

*HMRC Employment Status
Manual*

Assessing employment status – other factors



Assessing employment status – HMRC tool

- HMRC's "Check employment status for tax" (CEST) tool
- Asks questions about
 - Substitutes
 - Work arrangements (broadly relate to client's control over work)
 - Financial risk
 - Integration into client's business
- HMRC will be bound by CEST determination if information provided is accurate and reflects *actual or expected* working practices

Next steps/ possible alternative approaches

Some things to think about

- Do you have a complete record of workers engaged via PSCs?
- How are you going to assess employment status of each worker?
 - Before payments in relation to services provided after April 2020
 - Use CEST tool?
- How are you going to communicate with workers?
- What processes do you have in place for objections?
- Record keeping obligations, including keeping agreements under review
- Additional costs – tax, NICs, increased fees

Some alternative approaches

Approach	Advantages	Disadvantages
Conduct assessment and deduct tax/ NICs where appropriate	Continuation of existing model; low risk of employment claims; costs advantages where no deemed employment	Additional costs where deemed employment applies; administrative burden
Engage workers directly via agency	No need for individual assessment; low risk of employment claims	No costs advantages over IR35
Engage as a worker and tax under PAYE	No need for individual assessment	Greater risk of employment claims; entitled to "worker" rights; no costs advantages over IR35
Engage as a fixed term employee	Certainty – employment and tax position clear	No costs advantages over IR35; access to employment benefits
Outsourcing arrangement	IR35 issues should not apply; low risk of employment claims	Additional costs likely to apply

Statements of work

- Contract covering task or project – outcome not time based
- For contractor to resource the project
 - Tasks outsourced to the contractor
 - And on that basis IR35 shouldn't apply
- Does it reflect the reality of the situation? Or just a repackaging of existing arrangements?

Conclusion – key takeaways

- New IR35 regime applies to payments for services provided after 6 April 2020
- If contractor is a "deemed employee" paying entity must deduct tax and NICs and pay employer NICs and apprenticeship levy
 - Liability for unpaid tax and NICs can flow back up chain to end-user if not the paying entity
- Take action now to assess impact of IR35 on workforce
- Consider whether alternative model better meets business needs

Key contacts



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