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Contractor Guide To The IR35 Reform

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Introduction.

The IR35 legislation has been in place since April 2000, allowing businesses to legitimately welcome off-payroll contractors into their organisations in a way that tackled common issues around tax avoidance and 'disguised employees'. Since then, it has undergone one reform in 2017 for the public sector and we're now on the brink of yet another in April 2021, this time geared towards the private sector. We're going to be examining what this means for contractors and how to ensure that your contract work isn't negatively impacted through this period of change.

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**63% of
contractors
don't feel
confident in
their knowledge
of IR35**

The IR35 Reform.

It hasn't always been easy to distinguish between contractors and employees, and in the past this responsibility has sat directly with the contractors themselves. Meaning that all liability for any tax discrepancies previously lay with the contractor, rather than the employer.

In 2017, following a review by HMRC, it was determined that one third of all contractors were in fact operating under the incorrect status. An IR35 reform for the public sector meant that the accountability for determining a contractor's IR35 status then reverted to the agency or employer. Many weren't prepared for this sudden change and it caused a lot of uncertainty for employers, contractors and recruiters alike.

We're currently facing an extension of this reform to the private sector due to come into force on the 6th of April 2021, however this will only affect medium and large sized businesses for the time being. A small sized business is defined by:

- **If the company's aggregated net turnover is less than £10.2million**
- **If the company's aggregated balance sheet totals to less than £6.1 million**
- **If the company has less than 50 members of staff**

Off-Payroll Working Rules.

From 6th of April 2021, for any payments made on or after this date, limited company contractors will no longer be responsible for determining their IR35 status and this will then fall to private sector employers.

However, the fee-payer (usually a recruitment consultancy or in some cases this also sits with the employer) will then be responsible for deducting National Insurance and tax contributions. This remains the case for contractors deemed as 'inside IR35' in which case the fee-payer would also need to pay Employer's National Insurance and the Apprenticeship Levy if applicable.

In both cases, the private sector employer would also be required to provide a determination result to the fee-payer and off-payroll contractor so that everyone is clear on IR35 status and how to proceed from that point onwards. They may additionally be asked to provide reasoning should the determination be questioned.





Under Current IR35 Rules.

 Contractors are responsible for determining their IR35 status

 Contractors are liable for paying the relevant NI and tax

Under New IR35 Rules.

 The employer is responsible for determining a contractor's IR35 status

 The fee-payer is liable for determining the contractor's NI and tax.



Role-based Assessments.

Role-based assessments have been touted as the best way of quickly determining your IR35 status based on your role type. HMRC deems these as legitimate and seemingly many organisations are on board with this method of assessing whether an individual is classed as 'off-payroll'.

However, there are specifics to a contractor's circumstances that role-based assessments fail to acknowledge, making them somewhat overly simplified when used in isolation which could negatively impact your ability to get future contract work.

Role-based Assessments.

The reason why role-based assessments can often misconstrue the situation is because they only take a limited number of factors into consideration. There are many aspects of contracting that are entirely unique to each individual and their way of working, and role-based or blanket assessments often miss these.

For instance, you may be in business on your own account or source all your own work but none of this would be apparent from a role-based assessment – meaning that you likely wouldn't be deemed as inside IR35 and may not get the work as a result.

Therefore it is best practice to follow a role-based assessment with an individual assessment to ensure all factors to your employment have been carefully considered.

7



35% of contractors have concerns about clients correctly assessing their status



HMRC's CEST Tool.

HMRC have developed a Check Employment Status for Tax tool to help employers determine whether or not a contractor is inside or outside of IR35. The tool has been heavily scrutinised by many for its various inconsistencies, and results should be taken with a pinch of salt.

Substitutions

Under IR35, a contractor must be able to prove that they aren't personally needed to fulfil their role and that the employer could substitute this resource if needed. The tool seems to rely too heavily on this to make its decisions, when in reality a judge wouldn't make their determination based on this alone, but on the contract as a whole.

No Mutuality of Obligation

Arguably a crucial indicators of whether someone is or isn't within IR35 – Mutuality of Obligation (MOO) isn't considered in CEST at all. This is a major flaw in the system as MOO tells us whether or not there is an expectation of further work, CEST already presumes that MOO is in place for all contracts, making it more difficult to determine one way or the other.

No context

Alas, as with any purely digital test, CEST completely lacks context and instead gives its determination solely on the questions it asks – this ignores a multitude of criteria that could better inform the decision.

IR35 Reform Concerns.

In a survey conducted with our contractor network, we discovered that there are a number of issues with the public sector reforms to IR35 that are keeping contractors awake at night. Many of them are closely linked to loss of income and apprehensions about the ability to continue working with businesses on a contract basis.

In fact, only **5%** reported feeling confident in how the IR35 reform taking place in April 2021 would affect them – which is an indication that there's still a lot of work to be done on reassuring contractors.

We understand that these are serious concerns and we are here to support you. We've listed some of the top concerns observed by our survey respondents to show you how other contractors have responded.



IR35 Reform Concerns.

In a survey conducted with our contractor network, the below were considered some of the biggest worries about the impending IR35 reform.

1

Blanket Assessments

Many of our respondents cited blanket assessments as their number one concern with the IR35 reforms. In fact, 35% expressed deep concern about employers' understanding of the reforms and whether a wave of generalised determinations would ensue – meaning of course that those who are in fact within IR35 would be tarred with the same brush as those outside of it.

2

Loss of Earnings

Understandably, the second biggest worry for contractors is that between blanket assessments and the expectation of having to pay more tax and National Insurance– their finances will suffer as a result. Almost 30% of contractors we spoke to raised concerns about financial repercussions and expressed negativity around how it would affect their day rate and contracting career.

3

Diminishing Contract Roles

Given that there's soon to be a lot more consideration and red tape around the utilisation of contractors, 15% of our respondents expressed concerns around the number of opportunities in the UK market for contractors. Whether that's due to organisations hiring more permanent employees or unwilling to increase day rates – they believe post IR35, contractors will be left to fight over a smaller pool of roles.

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Preparing For IR35 Reform.

1

Determining your status

Things to consider when establishing if your role is inside or outside of IR35.

2

How to check & appeal your status

Learn about the tools available to you and what to do if you disagree with the decision.

3

Tips for Limited Company contractors

Extra information to help you avoid getting caught out by IR35 as a limited company.

1

Determining your status.

In order to determine whether you are inside or outside of IR35, multiple things are considered. Having a Personal Service Company (PSC) set up is not enough to show you are outside IR35.

If it is judged that some or all of the attributes on the right apply to your role, you may be considered an employee and be taxed as such.

Substitution

Your client should not be able to reject a substitute to do your work. If the client wants you and no one else to perform the job, you will be taxed as an employee of the company.

Control

If your client has a lot of say over where, when and how you complete the contract work, it will be argued by HMRC that you are engaged in a typical employer-employee relationship.

Mutuality of Obligation (MOO)

There should be no obligations between you and the client, especially no expectation of future work. You should also be able to reject work, otherwise MOO will be in place.

2

Check & appeal your status.

There are ways to quickly check your IR35 status, but they are not without their shortcomings. Care must be taken to avoid an incorrect decision, however, you can challenge your status if you disagree with your client's judgement.

HMRC's CEST tool

Relying on the Check Employment Status for Tax tool is warned against as it oversimplifies your situation. It automatically presumes MOO is in place, which can harm your claim of being inside IR35. A lot of CEST decisions have been overturned by judges in the public sector because the tool ignores context, so tread carefully and do your research before using it.

Disputing an IR35 decision

After going through your client's status disagreement process, HMRC will request evidence and supporting documents. In some cases, you may be asked to attend a tax tribunal. For this reason, it is vital that you keep records of all of your correspondence with the client. If you cannot show how your role differs from an employee, you could get caught out by IR35.

3

Tips for contractors.

HMRC may ask you to provide evidence that you are independent of your client. Even if you have a PSC set up, HMRC could decide that you are using this to cover up your true IR35 status.

However, here are some ways to strengthen your case and some things that you should avoid doing if you want to be determined to be outside IR35.

Highlight the differences

Keep client correspondence and prepare to show how your contract is different to an employee.

Don't name your PSC after you

This shows that your company is distinct from you and you could delegate the work if necessary.

Invest in your development

Employees don't pay for their own training, so you're displaying that you are separate from the client.

Have multiple clients

If your income is split fairly evenly between multiple clients, it's harder for you to be labelled an employee.

Deltra's approach to IR35.

We're here to support you through this period of change. To make the transition as easy as possible, here are some of the ways we can work with you regardless of your IR35 status.

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Role Determination

We can help you identify your IR35 status using our intuitive role determination tool that takes individual circumstances into consideration.



PAYE

If you're working inside of IR35, we can work with you on a PAYE basis. We also have an affiliation with a globally recognised umbrella company.



Statement of Work

We'll work with you on the client's behalf to fulfil a specific project requirement in clear and easy to determine way.



Consulting Services

We can bridge the gap between client and contractor through our consultancy services, maintaining the distance necessary for an out of IR35 ruling.

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