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Employer's 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, 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 employers and how to ensure that your contract resource isn't compromised 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 a contractor's IR35 status based on the 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 and can have negative implications for the contractor.

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, a contractor may be in business on their own account or source all their own work but none of this would be apparent from a role-based assessment – meaning that they 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 that contractor's employment have been carefully considered.

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 indicator 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 and employers alike.

In the interest of helping you to make sense of it all, we've listed some of the top causes for concern observed by our survey respondents.



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.

Key Considerations

1

Workforce

Asses how many contingent workers you currently have and examine their roles within your organisation.

2

Processes

Think about how you're going to go about individually assessing each contractor to avoid blanket determinations.

3

Resources

Take a look at the tools or external advisory bodies you have available to you and make use of them.

1

Workforce.

The best place to start when trying to work out your course of action for the reforms is to take a close look at your workforce and analyse who your contingent workers are, and what are their roles?

Assess your workforce

Identify your contingent workers, examine their roles and whether or not they are PSCs (Personal Service Companies). Identify the provision of any managed / outsourced services.

Identify responsibilities

Identify who is responsible for making decisions on the employment status of your off-payroll workers and who will carry the tax liability (who will be the fee-payer).

Identify contractual chains

Examine direct hires as well as those hired through agencies and make note of them.

2

Processes.

From firming up an assessment process to giving your reporting an overhaul, having a really slick IR35 process in place is crucial to ensuring your transition to the new way of working goes smoothly.

Assessments

Decide how you're going to deal with IR35 determinations on a case-by-case basis. Be it through CEST or an external service provider.

Clear communication

Ensure you have a good system in place for effectively communicating determinations between your internal team, contractors and any agencies.

Accurate reporting

It's crucial to keep a record of all payments made, you'll need this in the event of a HMRC audit. Review how you're going to record and report the determinations.

3

Resources.

Finally, you'll want to explore the resources your organisation can make use of where IR35 is concerned. This could include support from external parties or by utilising HMRC's CEST tool.

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HMRC's CEST Tool

Whilst developed for the public sector, HMRC have encouraged it to be used in the private sector as well.

Status Reviews

You may choose to consult an external supplier on the IR35 status of your contractor, this could be an agency.

Deltra's Role Determination Tool

By answering just 12 questions, our clients can use our online role determination tool to assess whether certain roles sit inside or outside IR35.

Deltra's approach to IR35.

At Deltra we recognise that every business is unique, and as such we've come up with different ways of working through IR35 to suit your needs.

We're here to support you through this period of change. To make the transition as easy as possible, here are some of the services we can provide.

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Statement of Work

Working flexibly with handpicked associates who can scope out, price and deliver discreet pieces of work quickly and easily.



Virtual Bench

We work in partnership with you to create a bespoke solution for your business that gives you access to a network of pre-screened candidates who are ready to start work within 72 hours.



PAYE

For contractors working within IR35, we are able to pay on a PAYE basis and we also have an affiliation with a global umbrella company backed by a large global insurer.



Consulting Services

Our team is able to work with you to provide a comprehensive solution, enabling us to take on the delivery of your transformation agenda whilst working with a team of experienced professionals.

The Benefits of a Consultancy Model.

If having a level of distance between you and your contingent workforce is the right route for you, we can work flexibly as a consultancy to deploy a member of our trusted network to work on your project or programme.



A solution focused approach



Tailored to your project requirements



Hand over the entire recruitment process



Maintain a level of distance



Change contractors with ease

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