



IR35 - Urgent alert for companies that hire contractors

LubbockFine
Chartered Accountants

Advice that adds up

FACTSHEET | IR35—Urgent alert for companies that hire contractors

If your company hires contractors you should already be aware of the IR35 rules. These aim to prevent businesses avoiding PAYE and NIC by hiring people via their personal companies. If not see our introduction to IR35 and personal service companies (PSCs) here https://www.lubbockfine.co.uk/sites/www.lubbockfine.co.uk/files/ir35_personal_service_companies.pdf

HMRC proposes to alter the way contractors are taxed and to give additional responsibilities to those who hire them from next April and issued further guidance on the changes at the end of August. What follows is a very brief summary of what's happening, how hiring companies might be affected and what they should be doing now.

What's happening?

HMRC say non-compliance with IR35 is running at 90%. Currently, other than for public sector contracts, the PSC has to assess whether it is within IR35 or not. Most inevitably conclude not.

From 6 April 2020 the burden shifts to the hirer of a contractor via a PSC to make that call. It's likely that hirers will want to err on the side of caution, but they will need to be able to justify their view. Often there will be an intermediary between the hirer and the PSC and that intermediary will be responsible for making PAYE-type withholdings.

Which businesses should be concerned?

1. Those who hire people as contractors via the individual's PSC, rather than taking the individuals on as employees and running them through the payroll.
2. Small businesses and companies should not need to worry as they have a carve-out and for them the present regime will continue as now. 'Small' means small for Companies Act 2006 purposes. The result is that these changes are aimed at large and medium companies.
3. Small companies will, however need to monitor the Companies Act 2006 criteria to ensure that they make the necessary changes to the way they operate if and when they cross the threshold to become medium-sized.

What about the past?

The hiring company should not need to worry about past treatment of payments to PSCs as the onus has been on the PSC to self-assess. However, for the PSC there's also the fear that, if IR35 is applicable from April 2020, then previous years may be subject to HMRC scrutiny too. The hirer will therefore need to handle any changes in treatment carefully if it wants to maintain a relationship with the contractor and avoid setting the PSC up for an expensive retrospective enquiry.

Can the hiring company be liable to pick up the PAYE?

Yes if they:

1. Fail to take reasonable care in making a decision about a contractor's status
2. Fail to tell the worker or intermediary about the outcome of their decision on the contractor's status on or before the contract is signed or the work starts
3. Fail to respond to a contractor's appeal against their status decision within 45 days

What should hirers do before 6 April 2020?

1. Assess each of their contractor relationships. Key to the process is to work out whether the contractor would be genuinely self-employed in the absence of the PSC or whether the reality of the relationship is employment. The HMRC online test (see <https://www.gov.uk/guidance/check-employment-status-for-tax>) might be useful for more clear cut cases but is unlikely to help much for cases with any nuance or complexity.
2. Communicate their decision to the worker/PSC/intermediary
3. Keep detailed records of the status determinations and reasons for coming to their conclusions
4. Set up a process to deal with disputes arising from the determinations – it's likely that this will be necessary given the pressure on the client to be cautious and preference of the contractor for the status quo.

For each relationship there is a limited range of outcomes.

- The contractor is self employed and IR35 doesn't apply
- The relationship will be altered to become one of self employment
- The hirer concludes that IR35 will apply and instructs any intermediary to make deductions

Summary

Many businesses have got used to being able to turn resources on and off by hiring contractors. Equally many contractors have found a lifestyle that suits them by working through PSCs. HMRC's proposals are likely to make that process more difficult and expensive. Both sides of the contractor relationship need to be preparing now, but hiring companies have particular responsibilities and need to be prepared

If you think that you or your business is likely to be affected please email Graham Caddock grahamcaddock@lubbockfine.co.uk or call 020 7490 7766.



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