



IR35

your contractor questions
answered

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We're here to support you.

For more information and to contact the Morson IR35
team email IR35@morson.com

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IR35 is the biggest piece of legislation to hit the contractor landscape in recent history. As of April 2021 the rules for the taxation of contractors providing their services through a personal service company (PSC) are changing. This will affect all contractors working in the private sector who do not meet HM Revenue and Customs (HMRC) definition of self-employment.

One of the main changes is that the responsibility for determining your status will move from yourself to your end client.

We are aware of the proposed IR35 changes and we have been lobbying government and our associated industry bodies about the importance of our contractors operating via a limited company and the flexibility it provides for organisations.

We are committed to supporting our contractor community and recently ran a survey to understand your views. Over 600 respondents asked specific questions about IR35 and status.

In this document IR35 specialists, Chris Bloor from Champion Contractors and Phil Beardwood, Compliance Director at Morson, answer some of the most common questions to help you understand and adapt for the new rules.

WHAT IS IR35?

IR35 is a tax law introduced to tackle the problem of 'disguised employment'. IR35 is intended to catch any individual who is supplying their services through a PSC but would otherwise be regarded as an employee of the end-client (this means the contractor would be deemed 'inside' IR35).

If caught, payments received by the PSC would be subject to tax and National Insurance (NI) as if the individual were employed by the end client. The resulting tax liability would fall upon the contractor.

One of the main changes is that the responsibility for determining your status will move from yourself to your end client.

WILL THE DEADLINE BE EXTENDED?

The IR35 reforms to the private sector were delayed until April 2021 due to Covid-19. Unlike the original April 2020 deadline, which was impacted by a General Election, Brexit decision and other significant political and economic factors, this 12-month extension has provided clients with time to reset the IR35 agenda and proactively plan with a clear and confirmed deadline in mind – April 2021.

During the coming months, end clients that engage contractor populations will be required to undertake a full review and correctly define the IR35 status of every off-payroll worker who provides services through a personal service company (PSC / Limited company).

WILL PAYE AND UMBRELLA BE THE ONLY OPTIONS?

Not necessarily, but these two payment models will be more prevalent in the market place to ensure full compliance.

IS LIMITED COMPANY STATUS ENOUGH TO COVER ALL EVENTUALITIES?

The end client determination will dictate tax status as to whether the limited company model is appropriate for you.

HOW DO MORSON INTEND TO PROCEED?

WHAT IS MORSON'S VIEW ON IR35?

We are aware of the proposed changes and have experienced the challenges presented by this legislation when it was rolled out to the Public Sector in April 2017.

We will work with both clients and contractors to establish processes and procedures for establishing the tax status associated with the various roles undertaken by our contractors prior to implementation 6th April 2021.

We will endeavour to keep all parties updated to ensure a fully compliant supply chain.

WILL MORSON BE REVIEWING THE WORDING OF THEIR CONTRACTS SO AS NOT TO LEAVE THEM OPEN TO IR35?

Our terms and conditions will not be amended as we consider them fit for purpose. HMRC will always look beyond the initial contract paperwork and delve in to the actual day to day working practices of each assignment.

We issue a business to business contract to all limited company's and therefore believe that it is already fit for purpose.

WHAT ARE MORSON PLANNING TO DO WHEN THE LEGISLATION CHANGES?

We will work in collaboration with clients and contractors to ensure that reasonable care is demonstrated by the client when making assessments relating to the IR35 status of all individuals.

If an individual is determined to be inside IR35 then they will be offered the option to be paid PAYE by us (or PAYE through their PSC) or via a Morson PSL Umbrella Limited Co.

WILL MORSON AND THE END CLIENT MAKE IR35 DETERMINATIONS THROUGH BLANKET DECISIONS OR ON A PER ROLE BASIS?

Clients should make determinations on a per role basis. We will work with clients to ensure that they are demonstrating reasonable care when making assessments relating to the IR35 status of all individuals.

If an individual is determined to be inside IR35 then they will be offered the option to be paid PAYE by Morson (or PAYE through their PSC) or via a Morson PSL Umbrella Limited Co.

END CLIENTS AND IR35

HOW CAN THE END CLIENT SUDDENLY PAY FOR HOLIDAYS, SICKNESS, PENSION CONTRIBUTIONS, ETC?

The established PAYE rate for the same role will already cater for any applicable entitlements.

HOW ARE AGENCIES WORKING WITH END CLIENTS TO ENSURE MINIMUM DISRUPTION TO THE MARKET?

We are encouraging clients to put in place project plans with key dates/milestones in advance of the legislation date and will offer contractors ongoing support once clients pass the status decision down the supply chain.

HOW ARE YOU SUPPORTING CLIENTS TO PREVENT RISK AVERSE ASSESSMENT DECISIONS?

Under the legislation clients must demonstrate "reasonable care" in making their determination which we hope will drive compliance. Morson will work in collaboration with clients and contractors to ensure that reasonable care is demonstrated by the client when making assessments relating to the IR35 status of all individuals. If an individual is determined to be inside IR35 then they will be offered the option to be paid PAYE by Morson (or PAYE through their PSC) or via a Morson PSL Umbrella Limited Co.

HMRC AND IR35

WHO WOULD HMRC PURSUE IF THEY DETERMINE SOMEONE IS INSIDE IR35 - THE CONTRACTOR OR THE END CLIENT?

Post April 2020 the fee payer (the agent) would be the first point of investigation, pre April 2021 any liability will lie directly with the PSC.

WHAT IS HMRC'S DEFINITION OF SELF-EMPLOYMENT?

HMRC defines self-employment as workers who aren't paid through PAYE and don't have the employment rights and responsibilities of employees. HMRC may regard someone as self-employed for tax purposes even if they have a different status in employment law.

IR35 AND MY CONTRACT

HOW WILL IR35 EFFECT CONTRACTS THAT WILL BE PART WAY IN WHEN THE LEGISLATION COMES INTO FORCE?

If the role is determine within the scope then contracts will be terminated and the payment model of either PAYE or Umbrella Company will be available. If deemed outside of scope then the contract will continue with any future tax liability moving to the Fee Payer post April a 2021 and staying with the PSC for contracts pre April 2021.

ARE SHORT TERM CONTRACTS LIABLE TO IR35?

Each contract/assignment is looked up on by HMRC in their own right, so there are no hard and fast rules.

HOW DOES IT WORK IF I SUBCONTRACT FOR TWO DIFFERENT COMPANIES?

Each role will need assessing on their own merit and may be that one role is deemed outside of scope and another role determined 'in scope'.

IR35 AND MY CONTRACT

WOULD I BE ABLE TO CARRY ON WITH MY CURRENT ROLE AS A SELF-EMPLOYED RATHER THAN A LIMITED COMPANY?

No, self-employment is governed by the intermediaries legislation.

WILL SUB-CONTRACTORS BE OFFERED PERMANENT POSITIONS?

The client may well take the opportunity to offer some contractors permanent roles based on business strategy.

MY COMPANY IS BASED IN THE UAE BUT MY CONTRACT IS WITH A UK BASED COMPANY, ALL WORK I'M PROVIDING IS NOT BASED IN THE UK. HOW WILL IR35 AFFECT ME?

We would advise that you obtain specialist advice from your accountancy however, if you are using a NT tax code then it may be opportune to move to a risk adverse PAYE model.

WILL I HAVE TO WORK FOR MORE THAN ONE COMPANY IN A FINANCIAL YEAR TO QUALIFY TO REMAIN AS A LIMITED COMPANY CONTRACTOR?

Each contract assignment would be assessed on its own merit. If you have multiple clients then this may strengthen your IR35 status however each assignment would need to be assessed and you could potentially be inside IR35 on one assignment and outside on the other.

MY LIMITED COMPANY HAS OTHER WORK STREAMS DOES THIS AUTOMATICALLY TAKE IT OUT OF IR35?

No, each work stream would be assessed on its own merit. If you have multiple clients then this may strengthen your IR35 status, however each assignment would need to be assessed and you could potentially be inside IR35 on one assignment and outside on the other.

DETERMINING STATUS

WHO DECIDES IF I AM IR35 COMPLIANT? THE CLIENT, THE AGENCY OR ME?

From April 2021, it will be the end client's responsibility to determine the IR35 status for all contractors operating via their own PSC's.

HOW MANY DAYS MUST YOU NOT BE WORKING AT A PARTICULAR COMPANY FOR TO COMPLY WITH NEW REGULATIONS?

IR35 is a complex piece of legislation and all aspects of the working practices are taken in to account not just one element or contract length.

IS THERE A DEFINITIVE WAY TO DEFINE IR35 STATUS?

Undertaking an ESI (Employment Status Indicator) test based on both working practice and the way a business is perceived will give an indication of potential tax status.

FINANCE AND TAX

HOW WILL IR35 EFFECT MY TAX PAYMENTS AND WAGES?

If deemed within scope and you wish to continue to be engaged via your limited company then a new contract will be issued and the rate will be subject to both tax and all NI deductions by the fee payer. Please speak to your accountant/adviser and they will be able to better advise you on the potential financial consequences.

WILL THE AGENCY OR THE CUSTOMER BE LIABLE FOR PAYING NI CONTRIBUTIONS FOR THE CONTRACTOR?

If engaged via an agency then relevant deduction from the rate will be made by the agency.

WOULD I BE LIABLE FOR PAST PAYE TAX IF I WAS FOUND TO BE WORKING OUTSIDE IR35?

HMRC have stated that they do not intend to seek tax retrospectively however this approach could not be ruled out.

IR35

still have questions?

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