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IR35 and how it affects you

What is meant by IR35?

IR35, is a piece of legislation, which came into force in April 2000 to tackle the avoidance of employment taxes by those who work through intermediaries or limited companies (often, but not always, their own personal service companies).

If these individuals are found to be working as “disguised” employees, for example, being engaged and paying tax on a self-employed basis but under terms and conditions that would suggest that they are actually employees. In such circumstances, they would be benefitting from the tax efficiencies of self-employment and not paying the tax that an employee would be required to pay.

What is happening in April 2021?

IR35 legislation is changing for those engaged by a medium or large client in the private sector. The legislation provides that the burden of making a determination of employment status will shift from an intermediary (usually a personal service company) to medium and large clients that are using the services of the intermediary. Once a decision has been reached as to status, the end user client must confirm this by providing a “Status Determination Statement” (SDS) to the contractor and any agency or other provider in the supply chain.

What does this mean in practice?

If HMRC determine that a contractor is inside IR35 but has been treated as being outside of IR35 and as such, there has been an underpayment of tax and national insurance on the services they have provided, there are circumstances where the liability for the underpayment can move up the supply chain.

If, as the end user, you have failed to issue a SDS, use reasonable care in preparing the SDS or deal with an appeal or challenge in respect of the SDS; or if the fee payer has received a complaint about a SDS but simply doesn't pay the tax and NICs to HMRC and if HMRC can't recover the IR35 debt from the fee payer then they can recover the debt from the first entity in the supply chain (Agency 1) or if there is no realistic prospect of success from Agency 1, the end user.

How do I know if my business will be impacted?

If you are a medium or large business and use self employed contractors, flexible workers or intermediaries to manage the supply of your labour then it's likely that these changes will impact your business. Likewise, if you are a recruiter or intermediary in the labour supply chain they are likely to impact on your business.





What do I need to do?

When reforms in the public sector were implemented in 2017, one of the main issues was that companies were unprepared and consequently unable to accurately determine the correct status of their contractors.

It would therefore be prudent for businesses to take steps now to ensure that they are prepared by the time the changes are implemented in April 2021. You might want to think about:

- Undertaking a full audit and status review of your workforce: this will entail looking at the true working relationship between your business and any contractors in line with the various legal tests that point to either self-employed or employed status. It is advisable that this is done on a case-by-case-basis.
- Review your processes and procedures: do you have the skills internally to carry out status reviews and to issue accurate SDS. Do you have the appeals process set up

and the resources to manage any appeals or challenges which are made? Do you have audit procedures in place with labour suppliers to ensure that you have visibility of the supply chain and the ability to spot and deal with problems quickly?

- Reviewing your consultancy agreements: ultimately it is the reality of the working relationship that HMRC will attach the most weight to as part of any enquiries, however, it is still important to ensure that these contracts (and supplementary documentation) include as many factors as possible relating to a self-employed status.
- Reviewing your agreements with suppliers: it is advisable that these agreements are updated in a way that reflects the conclusions reached in respect of an individual's IR35 status and provides as much protection to your business as possible.

- Carrying out a review of your labour model: once the above steps have been actioned, you will be in a position to consider the additional costs to the business should any contractors fall within the scope of IR35 and whether their continued engagement remain financially viable and within your risk profile.

If you decide to ban the use of self employed contractors and require a PAYE model is introduced by suppliers, will this impact on attracting and retaining key talent or increased project costs?

With a wealth of experience in this area, the recruitment team at Brabners can help you take the necessary steps to ensure your business is IR35 ready and compliant by the time the new rules are implemented. Should you wish to get in touch with us, please contact [recruitmentsector@brabners.com].

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