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IR35 Briefing Note



On 18th May 2018, the Government announced that they were opening a consultation on reforming how the IR35 rules work in the Private Sector. The consultation is like a discussion paper – it considers options to improve compliance within the Private Sector, similar to those implemented within the Public Sector in April 2017. The consultation closed on the 10th August, and we are waiting for further comment from the Government on the next steps. This briefing note gives you a quick reminder on what IR35 is, and considers how any changes to the legislation may affect your future assignments.

What are some of the key elements which make an assignment ‘inside’ or ‘outside’ IR35?

Control & Supervision	Equipment	Part & Parcel
Is the contractor ‘managed’ or are they using their own skills and experience to deliver a set of objectives?	Does the contractors’ business provide its own equipment?	How much is the contractor ‘part and parcel’ of the client’s business?
Working arrangements	Substitution	Mutuality of Obligation
Does the contractor have to work specific hours, or request ‘holiday’ dates? Is training provided?	Can the contractor send a replacement if they can’t attend?	Is either party obliged to give or receive work?

Off-payroll Rules

Intermediaries Legislation, or IR35, became law in April 2000. It was intended to tackle concerns about businesses hiring individuals as consultants rather than employees.

The particular example given was someone leaving work as an employee on a Friday, only to return the following Monday to do exactly the same job as a (Limited Company) consultant. In this scenario the business reduces their statutory responsibilities (as employment law is no longer applicable), whilst also reducing their employer NIC bill. The individual worker loses their statutory rights but gains flexibility and further tax planning benefits.

The premise of IR35 is that any individual caught by the legislation (also known as being “inside IR35”) must pay tax and NICs on a deemed payment broadly equivalent to the tax and NIC that an employee would pay.

IR35 legislation requires evidence to be considered covering several factors, with the actual working practices being more important than the contractual agreement.

For contractors working in the Private Sector, the current responsibility for deciding whether an assignment is ‘inside’ or ‘outside’ of IR35 sits with the WORKER and their own LIMITED COMPANY.



However, the Government has a continued theme of focussing efforts through legislation to tackle what they perceive has ‘tax avoidance’ and ‘evasion’ - the current estimate of the cost of non-compliance with IR35 rules is £1.2 billion.

What could happen next?

Now that the consultation has closed, we await an announcement from the Government about any new IR35 legislation. If the same rules are adopted as are operational in the Public Sector, this will mean that Clients and Agencies will need to take responsibility for assessing the IR35 status of each assignment. If an assignment is deemed as ‘inside’ of IR35, the agency will need to deduct Tax and National Insurance contributions before paying workers.



Nothing is confirmed yet! **Outsource** will keep you informed of all future developments.

Don’t panic! This does not mean the end of contracting as we know it! Yes, if this happens it will be a change, and clients will need to fully understand how IR35 applies to assignments, but **Outsource** will help our customers to understand the rules around this, and give practical guidance on how to correctly engage workers who are genuinely operating outside of IR35. We can also offer solutions for compliant engagement where a role is deemed to be ‘inside’ IR35.