



# IR35 PREPARATION 2021

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Practical guidance to help you  
navigate **IR35 reform**

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# OVERVIEW

### WHAT IS IR35?

The Intermediaries Legislation, commonly known as IR35, was introduced in 2000. This is tax avoidance legislation that applies when an individual worker provides services through an intermediary, such as a Personal Service Company (PSC).

The legislation was designed to ensure that were it not for the presence of the intermediary, the worker would be classed as employed, therefore taxes and employment costs should be paid similar to an employee rather than as a business. This is referred to as Inside IR35. Confusingly, the worker is 'deemed an employee for tax purposes' only, but not entitled to benefits like an employee.

### WHAT'S CHANGING

In 2017, the first phase of reform was introduced, HMRC implemented the 'Off-Payroll rules' into the Public Sector, the burden of complying with the Intermediaries Legislation shifted from the individual worker and their PSC to the Public Sector engager, these rules are now being extended to the Private Sector, effective from **6th April 2021**. Businesses will be responsible for determining whether workers are Inside or Outside IR35. The rules will apply to all medium and large businesses, small businesses will be exempt. To be classed as a small business, at least two of the following requirements must be met:

- + Annual turnover of not more than £10.2m
- + Balance sheet total of not more than £5.1m
- + Average number of employees must not be more than 50.





# SAVE THE DATE

06 04 21

## WHEN IS IT HAPPENING?

**The rules will apply to all payments made to workers on or after 6th April 2021.** Any organisation using the services of a PSC directly or indirectly will need to assess the status of the role and supply a Status Determination Statement (SDS) to both the worker and the fee-payer. The 'fee-payer' is the party in the supply chain closest to the worker's PSC - typically a Recruitment Agency. The SDS informs both the worker and the fee-payer whether the assignment is deemed to be Inside IR35 or Outside IR35.

This determines how the worker is paid - Inside IR35 means that all taxes and employment costs must be deducted at source, Outside IR35 means the assignment is deemed as self-employed, the PSC remains responsible for paying the relevant employment and business taxes.

Where a company engages a worker directly, they automatically become the fee-payer. To be compliant, HMRC dictate organisations must use **reasonable care** when completing the assessment, blanket determinations should not be made, assessments should be completed on an assignment by assignment basis.

## WHAT CAN YOU EXPECT?

Evidence from Public Sector reform shows there were definitely challenges! Additional responsibilities placed on organisations and Recruitment Agencies had a direct impact on administration and compliance costs and required changes to tools used for recruitment and payroll. Additional resources were needed to implement, manage and maintain the new processes, impacting budgets and margins.

Contractors unwilling to work Inside IR35 created challenges with attraction and retention, unsurprisingly, costs increased impacting projects already in-flight. Significant analysis, review and revision of resourcing strategies and budgets were required. For Private Sector organisations, the additional complication of commercial considerations needs to be taken into account.

Unlike the Public Sector in 2017, the Private Sector has more time to plan and prepare, implementation was rushed and mistakes were made, these can be learned from. The need for organisations to scale up and down to meet business demands remains, a flexible workforce is often a necessity.

**We are here to help you navigate the new rules, ensure you remain compliant and continue to provide first class resourcing solutions whether temporary, contract, fixed term, permanent or on a project by project basis.**







## BE PREPARED

# THE CLOCK IS TICKING...

There is a huge amount of work to be completed before implementation in April 2021. Resources will need to be allocated to ensure the impact on your business is minimal. Where you are unsure of any stage of the process or need additional support to meet your obligations, please contact us as soon as possible. We have in-house experts who are available to guide you and recommend a carefully selected number of external organisations offering tools and services relating to completing the assessments.



### AUDIT

- + Identify all PSC workers in scope
- + Use data from your main Recruitment Agency and Consultancy partners
- + Use data from finance and procurement teams to identify ad-hoc supply and direct arrangements
- + Identify your method of assessment
- + Prepare for assessment and document your process



### ASSESSMENT

- + Identify who will be responsible for completing assessments
- + Create reporting and recording processes to demonstrate 'reasonable care'
- + Complete assessments for all workers in scope
- + Create processes for any subsequent challenges to decisions, you will have 45 days from receipt of request



### INFORM

- + Don't leave assessments until the last minute, depending on the outcome, choices and preparations need to be made to ensure continuity and compliance
- + Ensure results are factual and an accurate representation of the engagement
- + Communicate results to the worker and the fee payer
- + Document the outcome against the current worker and the role



### REVIEW

- + What's the impact on your organisation?
- + Are projects at risk?
- + Will costs increase?
- + Do you need to revise your sourcing strategies?
- + Is there a clear end-to-end process documented and communicated?
- + What needs to change?

# IR35 ASSESSMENT

IR35 is a complicated piece of legislation with many variables underpinned by case law. Businesses will be required to provide a Status Determination Statement (SDS) for all assignments where the worker uses a Personal Service Company (PSC). Assessments need to consider all the key elements as listed below, the answers to each of these distinct categories informs whether the assignment is classified as Inside or Outside IR35 and, therefore, determines how taxes are collected and paid.

Whether you use HMRC's CEST tool, a third-party tool, bespoke service or develop your own processes, answers should reflect the reality of the assignment and in order to avoid liability, HMRC dictate that **reasonable care** is mandatory.



### SUBSTITUTION

Do you allow the worker to provide a suitably qualified substitute?



### MUTUALITY OF OBLIGATION (MOO)

Are you obliged to extend the contract, is the worker obliged to accept?



### SUPERVISION, DIRECTION & CONTROL (SDC)

Do you dictate how the work is done, where the work is done and when the work is done?



### PART & PARCEL

Is there a distinction between the responsibilities, obligations, treatment and behaviour between your employees and flexible workforce?





# INSIDE VERSUS OUTSIDE IR35

Despite IR35 being a complicated piece of legislation, businesses are now responsible for making the decisions.

There have been many widely publicised cases recently highlighting the level of complexity.

The answers provided on Substitution, SDC, MOO and Part & Parcel must reflect the reality of an assignment.

Answers are likely to vary between departments, managers and skills utilised, therefore, the results will vary.

It is possible there will be disagreement on the result of an IR35 assessment.

Businesses are required to respond to any disputes within 45 days providing reasons for the decision made, failure to respond means they become the fee-payer. This means they assume liability for Employers National Insurance and Apprenticeship Levy.

You have to balance compliance with running your business.

This is not just a paper exercise, the implications are far reaching:

- + Liability
- + Flexibility
- + Trust
- + Relationships
- + Costs

## Disruption is likely...

However, the extent of the disruption depends on the action you take to ensure you have robust processes in place and that these processes are documented and communicated well. It's key you 'check in' with all of your stakeholders to confirm their understanding so you not only remain compliant, but that you also have the right range of approaches in place to make sure you continue to attract and retain key talent across your organisation.



## NOTE

### REASONABLE CARE

- + **It is not your responsibility to enforce the legislation**
- + **It is your responsibility to use reasonable care to assess the status based on actual working practices**



# IMPLICATIONS OF IR35 STATUS DETERMINATION...

Once you have completed the assessments and communicated to all parties, there are other factors to consider in your planning and processes.



## OUTSIDE IR35

Payments can be made gross to the PSC, it is then their responsibility to pay all employment and business taxes. Assignments with this status will be highly prized giving clients the widest talent pool to source from.



## INSIDE IR35

This is where it gets complicated... The implication of a worker being determined Inside IR35 goes beyond whether they are able to operate as a business vs paying tax like an employee.

+ Typically take home pay will be less, this will impact availability of skills for assignments with this status. For skills in demand, it is likely that pay rates will need to increase in order to attract the best calibre.

+ Workers will no longer be able to offset travel and subsistence if they work away from home. This will impact the availability of workers prepared to travel for assignments, particularly challenging for organisations in remote locations or where there is not an abundance of local talent with the niche skills required.

+ Who will fund the Employers National Insurance Contributions and Apprenticeship Levy due? Combined, the cost is 14.3%. Under HMRC's Chapter 10 of ITEPA, the responsibility lies with the fee payer, it is illegal to take it from the workers pay rate. It is critical that communication sent to workers does not breach this requirement. If you are unsure of the implications, please speak with us.

+ Workers will now fall in scope of the Agency Worker Regulations (AWR), these regulations ensure that temporary workers under Supervision, Direction and Control are paid no less than the permanent equivalent employee. They will also be entitled to similar benefits. Lower paid workers will need assessing to ensure compliance.





# PAYMENT OPTIONS...



## AGENCY PAYE - PAY AS YOU EARN

The Contractor would be on the Recruitment Agency payroll as a temporary worker with employee deductions being made at source.



## UMBRELLA COMPANY

An Umbrella Company is an organisation that offers specialist payroll services, sometimes to recruitment agencies who don't operate their own temporary payroll system.

Workers may prefer specialist companies offering payroll services to Recruitment Agencies that don't run a temporary payroll. Workers may also prefer this option if they move between contracts and Recruitment Agencies on a frequent basis. The worker becomes an employee of the Umbrella Company, the Recruitment Agency pays the rate to the Umbrella Company who then becomes the fee-payer and responsible for making all deductions at source.

Only Umbrella Companies accredited by FCSA or Professional Passport should be used to avoid non-compliant models.



## DEEMED PAYMENTS

For contractors with multiple clients and revenue streams within their PSC or someone who is likely to move between Inside and Outside IR35 assignments, closing their company down might not be a viable option. In this scenario, payments can still be made to the PSC, but only after the fee-payer has accounted for employment costs and all employee related deductions have been made at source.



## NOTE

**HMRC issued tax codes will be used to determine payments made on each of the above models. The amount of tax collected and paid to HMRC should be the same irrespective of which option selected.**

# WHAT DOES THE FUTURE LOOK LIKE?

It is unlikely that this reform will go away or will be painless. Unfortunately, there isn't a magic wand to fix it, regardless of whether workers are classified as Inside IR35 or Outside IR35, there is a huge amount of activity and change that needs to be undertaken to meet obligations.

This reform impacts all medium to large businesses whether they use a few workers, hundreds or thousands. It also impacts managed service, outsourcing and partnering arrangements where there is a PSC in the supply chain.

**Understanding the types of arrangements you have in place is critical to determine where the liability and responsibilities sit.**

Recruitment Agency processes will need to adapt to these new ways of working, tax collection, increased reporting to HMRC and verification of Status Determination Statements to validate reasonable care are just some of their new responsibilities.

The landscape and opportunity for the flexible workforce and those who need to use it is changing significantly. A new class of worker has been created that sits between employed and self-employed, for now they don't have a label other than they are classed as 'employed for tax purposes'. There have been other reviews of legislation relating to the gig economy that may have further implications.

Information available from HMRC to help organisations is minimal, there isn't a step-by-step roadmap. The time left to effect changes required is limited causing knee-jerk reactions with far reaching consequences for some. Large consultancy suppliers see this as an opportunity to win high value contracts, which is absolutely not a viable option for most businesses.

**By working together, we can ensure that you have all the information you need to make the correct decisions for your business to ensure continuity and to help you meet your business objectives.**





# INSIDE IR35 SOURCING STRATEGY AND COSTS

The actions you take will give you full visibility of PSCs in your supply chain, how you use them and what roles they fulfil. Use this information to identify critical roles and prioritise activity based on identified risks to your business and projects.

Do you need to rethink your short, medium and long-term resourcing strategies? As in the Public Sector, high turnover is a possibility depending on the results of IR35 assessments. We will share information gathered on worker intentions and wider market intelligence. We will collaborate to plan and action attraction activity to mitigate any impact.



## DO BUDGETS NEED REVISING?

Competition for niche skills will be impacted by the assignment status, clearly Outside IR35 assignments will be more attractive. Market forces may push rates up for those determined Inside IR35. We can perform analysis to help you understand budget implications for your critical in-flight projects and future planning.



## GOING FORWARD

How do you attract and retain the top talent? Evidence from the Public Sector shows that retention became an issue for assignments with Inside IR35 determinations. When this was the case, workers moved more frequently where options of Outside IR35 assignments became available. The availability of workers who were happy to travel for assignments decreased dramatically due to the inability to off-set travel and subsistence. As a business who specialises in contract, temporary and permanent placements, we have an abundance of data and experience we can share. We will design and implement robust resourcing activity to ensure continuity of supply irrespective of the challenges.



## DO YOU HAVE THE RIGHT SUPPLIERS ON BOARD FOR FUTURE CHALLENGES?

The legislation is complex, it is critical that your supply chain fully understands not only the detail of the legislation, but also the inevitable impact on strategy, attraction and retention. A light touch transactional arrangement may no longer be fit for purpose, particularly for niche and highly skilled positions. Communication and knowledge sharing will be an extremely important factor. The value of working with suppliers who are informed and able to communicate effectively with stakeholders and workers can't be underestimated.

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**Use our resources and intelligence to ensure disruption is minimal. Our depth of experience across audit, strategy, sourcing and compliance is our greatest asset. Whether you need to make a few small adjustments or need wholesale change to ensure you remain able to deliver your products and services, we have the skill and know-how to help you.**

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# HOW WE CAN HELP

**+** Head Resourcing is in the fortunate position of being part of The Taranata Group which is a group of professional services companies whose combined expertise provides end-to-end services to make these changes as painless as possible.

**+** Use our in-house strategy, audit and analysis experts to perform an 'IR35 health-check' on your business. We will produce a comprehensive report on current state, highlighting risks, issues and actions required to avoid disruption and liability.

**+** Our combined knowledge and expertise of Temp, Fixed Term, Contract, Permanent, Consultancy and Project Team sourcing is unrivalled. Use our strengths to plan and implement strategies to minimise the risks to your business.

**+** Our market-intelligence will give you the critical information you need to plan future sourcing and talent strategies. We consistently gather salary, trends, availability and skill shortage data across all our businesses. We have what you need.

**+** Building resilient and informed teams to ensure you are compliant in addition to managing BAU will be challenging. Our consultants have the depth of knowledge to train, coach and mentor your staff creating a knowledge pool in your business.

**+** Your supply chain needs to be 100% compliant and future proof. Our in-house sourcing, supplier management and performance improvement specialists are available to review contracts, clauses, schedules and responsibilities to make recommendations on actions required.

**+** Output-based solutions may have previously been viewed as too complicated or expensive when compared to a flexible workforce. Use our combined Group skills to define scope, build teams, manage risk and deliver results. This could be a single output to multiple workstreams.

**+** We take compliance very seriously. Our industry leading experts can ensure you are not exposed to risk, they can manage on-boarding, recording, reporting through to audit and supplier management.

## OUR COMPANIES TALK TO US



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