

TAX PLANNING

WHAT IS IR35?

IR35 was introduced by the Government to counter perceived tax avoidance where individuals were providing their services through an intermediary such as a personal service company. This allowed individuals to avoid paying income tax and national insurance contributions on their earnings. If IR35 applies, then any fees paid to such a personal service company are treated as the employment income of the individual and subject to income tax and national insurance. Therefore if IR35 applies, there can be significant tax consequences. From April 2021 these rules are set to expand to the private sector.

The Government has recently announced a review into the proposed IR35 changes, with Financial Secretary to the Treasury Jesse Norman MP saying that they want to make the implementation of the changes 'as smooth as possible'. The outcome of this review is uncertain, and it remains to be seen whether there will be any substantive changes to the proposed expansion of the IR35 regime. However, if the Government does announce any changes as part of this review then this could affect the comments made below.

KEY POINTS

- From April 2021 medium and large private sector enterprises will be responsible for determining the employment status of contractors and whether IR35 applies.
- If a company decides that IR35 applies then the party paying the intermediary will have responsibility for deducting income tax and national insurance contributions.
- Companies will have to provide a 'Status Determination Statement' setting out their determination with reasons.
- Factors to consider include: whether regular payments are being made, if the contractor works exclusively for one company and the degree of autonomy the contractor has over their work.
- HMRC have an online tool – Check Employment Status for Tax ('CEST') which can be a useful indicative tool.
- Compliance is important - HMRC will be able to recover any tax due from the company, not just the individual.
- When filing for the first time, HMRC will only instigate enquiries into past years if they suspect fraud or criminal behaviour.

PRACTICAL STEPS FOR COMPLIANCE

Your organisation should identify all existing contracts involving personal service companies ahead of April 2021 to establish if you will be affected. Your organisation should also have a firm policy regarding future contractors who may be caught by the IR35 regime. You have to consider whether you will assume the burden of tax liabilities, or share them with the

contractor. Your organisation should also have a clear assessment procedure in place for determining the employment status of contractors and producing Status Determination Statements. If you require any assistance then you should seek specialist legal advice at the earliest opportunity.

FOR MORE INFORMATION PLEASE CONTACT



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