

how will IR35



affect your business?

what is IR35?

Before we examine how IR35 will affect your business and its operations, it is important to understand exactly what it means.

IR35 is the common name given to the intermediaries legislation. That is the legislation governing the tax status of individuals who provide their services through an intermediary such as a limited company (commonly known as a personal services company or a 'PSC').

The IR35 legislation aims to ensure contractors pay the appropriate tax based on their working arrangements. In effect, if the contractor essentially works as an employee (even though they are working through their own company) they should pay tax as an employee would.

Until 2017, compliance with IR35 was a personal matter for the contractor who was expected to assess their own status and account for tax accordingly. In April 2017, for assignments in the public sector, responsibility for making the assessment, deducting and accounting for tax, transferred to the "fee payer"; that is, the organisation paying the contractor.

Following HMRC's successful introduction of the legislation to the public sector, now is the time for private companies to be considering how IR35 will impact their businesses, hiring strategies and ability to work with independent contractors.

what is changing and when?

Originally set to come into effect from April 2020 for the private sector, the implementation of IR35 legislation was postponed until 6 April 2021, due to the coronavirus pandemic.

The most significant change is the shift of responsibility to clients (end users) to determine the tax status of PSC engagements. This means that as an end-user of PSCs' services, you will now determine if PSCs are in or out of scope for IR35. You will need to issue a status determination statement ("SDS"). If you don't, or if you get it wrong, you may be liable for unpaid taxes owed by the PSCs.

what is the effect of IR35?

The effect of IR35 centers on the employment status of the individual with regards to their relationship to the end-user.

The new changes will also reduce the risk of non-compliance, where workers operating through a limited company, could take a minimal salary to reduce liability under the Pay As You Earn (PAYE) system. This offsets genuine business expenses against revenue and takes an additional income by way of dividends.

An example case would be an employee leaving their job on a Friday only to return on the following Monday as a contractor through a third party. Since they would do the same job, but pay significantly lower taxes, HMRC perceives this as avoidance of tax. Of course, not every situation will be so clear cut, and there is usually a grey area around what makes someone an employee or a contractor.

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IR35 determinations can be difficult.

To gain a better understanding of how IR35 status can be determined, the below examples provide some context on who should be in scope.

In the very first challenge to the law, the case involved an individual who provided services to a bank under a company for which he and his wife were the directors. The lawyer for Inland Revenue successfully argued that he was an employee based on the length of his tenure, the fact that he was supervised by a manager and because he was integrated into the structure of the bank. As a result, the Court determined he should be considered an employee.

Another example from 2010 shows a contractor situation to which IR35 would not apply. In this case, an individual provided IT consultancy services to an organisation through a series of extended contracts, serving in such capacity for four and a half years. Since he wasn't entitled to employee perks, such as access to the staff car park and the ability to participate in employee training programmes, he was deemed to be a contractor rather than employee and thereby outside the purview of IR35.

who is in scope?

The legislation applies only to medium or large businesses. There's an exemption for clients who are small businesses which means meeting two or more of the following criteria (if not part of a larger group):

- annual turnover is no more than £10.2 million
- balance sheet total is no more than £5.1 million
- no more than 50 employees.

If two or more of these criteria are met, responsibility for determining the IR35 status of an engagement remains with the PSC and the changes do not apply. In this case, you would be classed as a "small company" and will not be liable for any of the PSCs unpaid taxes.

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dealing with change.

Although some confusion remains about the implementation of IR35, there are many lessons learned and experience gained from the public sector roll out in 2017, as well as the preparation for the initial proposed date of compliance in the private sector of April 2020.

Many believed this recent change would lead to a massive drop off in contractors willing to work in the public sector, and individual agencies report various outcomes. On the contrary, HMRC reports no evidence of drastic changes in the attrition rates of public sector contractors or significant increases in contractors' payment demands.

lessons for the private sector.

For private sector employers, the IR35 roll out has led to a great deal of confusion and uncertainty. Will companies still be able to hire contractors? Will such talent still want to work for organisations on a contingent basis, or will they seek permanent positions instead? And how can talent leaders devote the necessary resources to vetting contractors while ensuring they and their contractors are compliant with tax requirements?

Despite the reports from HMRC, it's not just employers that are concerned about the legislation. According to research by [Qdos Contractor](#), more than 60% of contractors surveyed fear that the changes introduced by IR35 would be unmanageable, driving concerns of a talent shortage in the U.K. as more contractors seek employment in other locations.

For an idea of how they can respond to the introduction of IR35, businesses need only to look at the public organisations that have already had to comply with its requirements. One example is Transport for London (TfL), the public-sector organisation responsible for public transport in and around Greater London.

In preparation for the April 2017 changes to IR35, TfL sought to assess its entire contractor workforce to ensure compliance, with minimal disruption to its critical ongoing projects. TfL performed a rigorous assessment of each part of the organisation, categorising which operations are most business critical. The categorisation classified certain roles, such as call centre advisors, as inside of IR35 to be paid via PAYE or Umbrella companies.

It decided that it would only allow limited company workers, PSCs, to continue if they passed an independent tax test, with the manager signing off, as a valid way of working. Many of the organisation's PSC workers in IT and engineering were able to continue as a result. TfL partnered with its suppliers under the guidance of the Head of Tax to deliver tax testing to ensure IR35 compliance.

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are you ready?

As IR35 will be extended to the private sector in April 2021, employers should be taking a similar approach to TfL and begin preparations now to avoid non-compliance penalties.

It is crucial to ensure that you are in line with the key milestones illustrated below:

IR35 high level timeline.



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5 ways to prepare for IR35 compliance.

1. assess.

If your company is not classed as a small business, you'll have to use reasonable care to issue a status determination statement, communicating to the worker and to the agency the employment status of the engagement the worker will be performing.

When IR35 comes into effect, the impact on your company's contingent workforce strategy can be significant. Many contractors may wish to increase their rates to compensate for the greater tax burden, leave to find new opportunities or dispute any judgments about their work status. Acknowledging these risks and developing a workforce planning strategy to compensate for sudden talent scarcity or greater costs can help minimise disruption.

2. discover and deploy.

When the April 2017 changes to IR35 were rolled out, the public sector only had two months to comply, creating a huge strain on resources, disruption to businesses and last-minute rushes.

It is strongly advised that you begin assessing your current contingent workforce now to see how many would go against the requirements of IR35, and what you can do to convert them to either employees or true contractors.

HMRC released the '[Check Employment Status for Tax](#)' (CEST) tool in March 2017 to support employment status determinations. To use the tool you'll need to know specific details about the engagement of the worker, such as:

- Will you allow for someone else (a substitute) provided by the PSC to perform the work during this engagement?
- Do you have the right to decide how the work is done?
- Do you decide the schedule of working hours and the work location?

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3. communicate with your talent.

To ensure the appropriate determinations are made, talk with each contractor to better understand their unique work arrangements. As many public sector organisations have learned, it can be a mistake to make assumptions and apply a blanket strategy for multiple workers, even if two contractors do very similar work. This can reassure your company and your contractors that you're investing in due diligence to make the right decisions.

4. consult with a trusted partner.

The regulations of IR35 are complex and can pose challenges for anyone tasked with interpreting them to determine whether contractors may be in violation. Collaborating with a trusted partner who has experience of carefully navigating the public sector through the IR35 changes in 2017 and preparing private sector clients for initial proposed changes pre-April 2020 can help you assess your risk, guide you through the changes and help ensure you maintain a compliant approach.

5. consider a consulting services solution.

Come spring 2021, those in scope will need to be ready for the new IR35 rules and, for organisations, now is the time for preparation to begin.

Randstad's tailored IR35 solution options provide a flexible and agile way to acquire the skills your company needs. With a proven track record, Randstad can recruit, hire, train and deploy a variety of skilled talent available to you as statement of work (SOW) consultants, while guiding you through the important changes, unravelling complicated jargon and ensuring a smooth transition ahead of April 2021.

Time is of the essence. It is crucial to begin preparing now. This will not only help you streamline processing to ensure compliance, but it can also help you build trust and maintain relationships with the contingent talent that is critical to your business.

want to learn more?

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