

In out, in out, shake it all about

IR35 relates to the situation where an individual (eg a contractor, freelancer or consultant) supplies their services to an organisation via an intermediary (eg the individual's own personal service company). IR35 is also known as the off payroll working rules.

The IR35 rules are aimed at preventing tax avoidance where an individual is engaged through an intermediary. IR35 applies if the individual would have had employee status had they been engaged directly by the end client.

Reformed IR35 rules have applied to the public sector since April 2017 and will be extended to the private sector from 6 April 2021. The extension to the private sector was delayed from April 2020 due to the coronavirus (COVID-19) crisis.

What's New?

Under the reformed rules it is you as the business who is responsible for assessing the employment status of the person and whether or not they are inside or outside of IR35.

Employed or Self Employed

The Inland Revenue offer a tool - Check Employment Status for Tax (CEST) to help clients to determine an individual's classification for IR35 purposes.

Use of CEST is not compulsory and there may be instances in which it fails to produce a result. However, HMRC has said that it will stand by any results given by the tool, provided that the information entered is accurate and it is used in accordance with HMRC guidance.

It is not an easy test to complete, as a business you can use other means to determine individuals' IR35 status.

If you determine the individual is inside IR35 you must provide reasons for that determination.

Appeal

The individual must be given an opportunity to appeal against the status determination statement where they disagree with the determination. You have 45 days from receipt of the appeal in which to respond. A failure to respond could lead to you being assessed as liable for any tax arising from an incorrect determination.

On receipt of the appeal, you can either:

- confirm that it is satisfied that the status determination statement is correct, giving its reasons; or
- withdraw the statement and replace it with a different determination.

While an individual is appealing against an "inside IR35" determination, as a business you must continue to withhold tax and national insurance. The "inside IR35" determination stands until it is reversed.

What are the consequences of IR35 and the reforms for your organisation?

Gone are the days that you can just pick the phone up and organise a contractor/individual to do some work. There's some central control here. Have you kept on top of changes of working practices so that you can pick up when a reassessment is appropriate?

If you fail to take reasonable care, you will be liable for the contractor's tax and national insurance contributions.

HM Revenue and Customs also has the power to issue penalties, set at a percentage of the tax and NIC liability, depending on whether the non-compliance was careless or deliberate.

Who is the project manager in your business who knows the working practices? What do your HR and legal team think?

How do you retain valued individuals who fall within IR35 as the tax deductions to the individual are significant if they previously deemed themselves outside of IR35 or self-employment? The cost to their back pocket could result in a 20% to 30% reduction.

About the Author

LAURA FINDLAY

Laura is a HR professional with 18 years' experience with

Financial Services, the majority of which has been within insurance.

In her role with UKGI Group, Laura works with Katherine Watkins, Head of HR Consultancy and provides objective support to firms on employment law and HR issues. She uses her interpersonal skills and knowledge to work with firms to help them develop strong and resilient HR strategies and establish healthy organisational cultures.

Laura is an Associate of the Chartered Institute of Personnel and Development (CIPD). She holds a Diploma Professional Development Scheme.

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