SAYER HAWORTH

IR35 & the potential effect of Ltd Company Contractors

Introduction

From April 2020, private sector Employers will be responsible for assessing whether contractors are self-employed by applying the IR35 criteria. This shifts the responsibility and risk, which has been the responsibility of the contractor, onto the Employer. The change in legislation excludes engagements with small companies, where contractors will continue to determine their own IR35 status.

A detailed look at IR35

A worker is involved in off-payroll working when they work for an Employer through their own intermediary, often a personal service company (PSC), but would be an employee if they were providing their services directly.
As off-payroll workers are paid through their own intermediary, they pay Income Tax and National Insurance contributions (NICs) in a different way to an employee.
The off-payroll working rules are in place to make sure that where an individual would have been an employee if they were providing their services directly, they pay broadly the same tax and NICs as an employee.

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Who needs to consider the off-payroll working rules

You'll need to consider the off-payroll working rules if you:

- provide your services to a client through your own intermediary
- hire people who provide their services through an intermediary to private sector clients

The intermediary can be:

- a worker's own limited company - known as a personal service company (PSC)
- a partnership
- another individual

Responsibilities of Applying IR35 & Employers

The reform will shift the onus for determining whether a freelance contractor is truly freelance or a full-time employee to the company who pays the personal service company, either directly or (if they are involved), via a recruitment business. HMRC is on the lookout for what it considers "disguised employment".

- Medium and large companies will be responsible for determining whether the contractors they hire fall within the scope of IR35 legislation and are liable to pay a higher rate of Income Tax and National Insurance Contributions (NICs).
- Employers must provide their Status Determination Statement (SDS) together with the reasons to the worker directly, as well as to the next party in the supply chain, of which there may be many. Each party must then in turn pass the status decision down the chain, and failure to comply with this obligation will render a party liable.
- Employers will be liable for tax and NICs where it fails to take reasonable care with the SDS.

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What is an IR35 Status Determination Statement (SDS)?

A 'Status Determination Statement' (SDS) is a comprehensive statement from the Employer which:

- Declares a contractor's deemed employment status following an IR35 assessment
- Provides reasons for reaching this conclusion.

HMRC CEST status tool

HMRC have provided its CEST tool to only pass contractors in cases of absolute certainty. This means that if you don't provide specific answers to particular questions, you won't pass HMRC's tool. A link to this tool is below

https://www.tax.service.gov.uk/check-employment-status-for-tax/reason-for-using-tool

Ltd Co Contractor versus Fixed Term Contract

There is a view in the market with the increased compliance and liability of an employer engaging a contractor, employers will start to only offer the option of Fixed Term Contracts on the employers' payroll.

The advantages to the employer will be no reporting needs to the HMRC of their contractors in the company, whereby the contractors will be on the employer payroll, all PAYE and NIC will be fully accounted for. The downside to this will be the employer will have much higher costs, where contractors will still be commanding the day rate equivalent. This will mean increased employment costs to employers. However, it will result in no liability or administration of reporting for IR35 rules.

The contractor being offered a Fixed Term Contract will have the benefit of having more rights as an employee versus a contractor. They will have the downside of paying the full PAYE and NIC, however, they will be included in all the standard benefits and bonus plans that would be in place for a full-time employee. It is expected that the contractor will also command the same day rate equivalent, however, as a PAYE employee.

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Summary

This report provides an overview of what is in the public domain today, it highlights the key implications of the IR35 rules being applied to the Private Sector from April 2020.

The general consensus is that the IR35 rules will affect contractors that are fulfilling mainstream roles within a Bank e.g. covering long-term sickness or maternity. The challenge will be applying the tests that HMRC are applying to contractors to determine if they fall inside IR35 rules.

Where a contractor is able to demonstrate that their work is genuinely work that would not be carried out by a full-time employee then there will be very little concern to Employers and Contractors when this is officially taking effect.

Contractors will need to adapt to the new environment, the financial services sector is under incredible pressure and demand from the regulator on a number of aspects. To have another burden of reporting and compliance needed to ensure they are compliant with IR35 may result in Employers only offering Fixed Term Contracts on the payroll at the equivalent day rate.

There is continued lobbying and protest to the government on IR35 rules, these rules have been in place in the Public Sector since 2017, the government has not changed the policy. The general view is that these new rules will be applied in April 2020 and will be a permanent fixture for contractors in the UK.

About the Author

Abbie Sayer is Managing Partner at Sayer Haworth Interim Solutions. Abbie has over 20 years in the recruitment industry, having lived and worked in the UK, Europe and the Middle East, and has acted as a trusted business partner to source senior leaders within Financial Services.

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