



IR35 Reform April 2023

What's Happening?

By Workwell | Oct 12, 2022

Recently, we've witnessed many changes regarding the taxation of individuals and businesses in the UK. Following the government's decision to repeal the off-payroll reforms from both the private and public sectors, compliance in recruitment supply chains will continue to be a rollercoaster ride for a while longer.

What is IR35? – Old IR35

IR35 is a term used for two different pieces of tax law. The first, 'Old IR35' has been around since 2000, and is known as the intermediaries legislation. It is found in Chapter 8 of the Income Tax (Earnings and Pensions) Act, known as ITEPA.

The point of Old IR35 is to examine the situation where an intermediary, usually a worker's own limited company, supplies the services of that worker to an end client. An agency may be in place between the worker's company (often called a Personal Service Company or PSC) and the end client, but this is not required for the legislation to apply.

The nature of the relationship between the worker and the end client is considered. A decision needs to be made as to whether this relationship would have been one of employment of the worker if the intermediary was not present.

If it was one of employment, then Old IR35 requires that employment taxes including Employer's National insurance are operated on the income generated by the worker, and paid to HMRC by the PSC.

Critically in the case of Old IR35, the worker and their PSC are solely responsible for deciding if the rules apply, and paying any extra taxes due, which would in all normal circumstances be higher than those that might be paid if a tax-efficient mixture of salary, expenses and dividends had been used to extract value from the PSC.

If HMRC felt that a worker and their PSC had not applied the Old IR35 rules properly, they could challenge the position via assessment and the worker would either have to pay the extra tax due or challenge the assessment via the Courts and Tribunal system.

New IR35

HMRC found it hard to enforce Old IR35 and felt that compliance with the rules was low. In 2017 in the public sector, and 2021 in the private sector, a new piece of legislation was introduced, known as the Off-Payroll Working rules (OPW), found in Chapter 10 of ITEPA. In most cases this New IR35 rule trumped the Old IR35 rules, which still applied in limited circumstances.


These rules still centred on the deemed employment status of a worker-client relationship but there were two fundamental differences.

- The decision was now the responsibility of the end client, and the financial liability for employment taxes now rested with the party paying the PSC, (often an employment agency, if one was present) although that debt could move up to the end client if it wasn't collected lower down the chain. If there was no party between the end client and the PSC, then the end client was both responsible for the decision, and liable for the additional tax risk if things went wrong.
- End clients had to issue a Status Determination Statement (SDS) and pass this down the supply chain. New processes had to be implemented and monitored, and in some cases supply chains decided to stop working with PSCs, so that the new rules did not need to be followed, instead using workers paid via employment, either directly, via agencies, or via umbrella companies.

What is changing?

In his Growth Plan 2022, the Chancellor Kwasi Kwarteng announced that the New IR35 rules will be repealed for work done from 6th April 2023.

In the absence of any new law replacing Chapter 10, this means that the old, Chapter 8 rules will apply once again, where they had been superseded by the new rules. Given the timescales, it is unlikely any new law will be in place by April 2023.



What does this mean?

Old IR35 will apply again, but we do not expect a full return to the situation prior to New IR35 arriving.

HMRC had persistent problems enforcing compliance, and they can be expected now to refresh their efforts and tactics ready for April 2023. They will consider using the Criminal Finance Act, the Managed Service Company rules and the Agency rules to enforce supply chain compliance in unfamiliar ways once the New IR35 has ceased to apply.

Prior to 6th April 2023 – New IR35 still applies.

End Clients	Agencies	Contractors
<p>Until the repeal takes effect, end clients will still need to make decisions on the status of assignments, issue SDSs and use reasonable care to ensure the appropriate processes are being followed inside their own businesses, and along the supply chain, as before.</p> <p>If the rules are not followed, the end client can end up liable for any underpaid taxes.</p> <p>End clients will also need to retain evidence of this compliance for the future, as HMRC can investigate after the repeal has taken effect.</p> <p>They can go back 4 years, or 6 years if they believe carelessness is involved.</p>	<p>Similarly to end clients, members of the supply chain like agencies will need to comply with the processes they put in place to cope with the new rules until they are repealed.</p> <p>The business paying the PSC will still be the first place HMRC go to for underpaid taxes, and if those businesses have stopped following procedures like complying with SDSs issued to them, they will usually be liable for those taxes.</p> <p>Evidence of this compliance should be kept, again for 6 years as best practice.</p> <p>Commercially too, end clients will want to see evidence that agencies are acting in accordance with their wishes, for example where employment-only models have been mandated by them.</p>	<p>If working in supply chains where the New IR35 rules are being followed, contractors can carry on working in the same way as before, provided they are happy that the supply chain is still following those rules.</p> <p>It will be sensible though for those workers to start to consider how they would like to work after the rules change – bearing in mind that supply chains are more likely to be interested in how their workers get paid once the rules change back to Old IR35.</p>

After 6th April 2023 – New IR35 is no longer in place, but Old IR35 remains

End Clients	Agencies	Contractors
<p>In the absence of the New IR35 rules, there is no requirement for end clients to assess status or issue SDSs to the supply chain.</p> <p>However, other rules such as the Criminal Finance Act, the Managed Service Company rules and the Agency rules could all be used to enforce compliance in the new landscape.</p> <p>As a result, end clients will need to pay more attention to their whole supply chain in order to avoid getting into trouble.</p> <p>Critically, HMRC hold detailed information about how workers got paid before, during, and soon, after the New IR35 rules applied.</p> <p>With a little analysis, they will be able to use this information to identify large groups of contractors whose behaviour changed, and in which supply chains they now operate.</p> <p>People making decisions about how workers are engaged in future need to bear this risk in mind and manage it responsibly.</p>	<p>The risks for agencies are broadly the same as for end clients but not identical.</p> <p>For example, the Agency rules are more likely to apply to recruiters than to end clients.</p> <p>But wholesale changes of engagement method, without reasoned justification, will again increase risks, potentially to all parts of the supply chain.</p> <p>At face value, if large numbers of contractors move from an employed model, to setting up their own PSCs all at once, HMRC will certainly have questions to ask.</p>	<p>As we return to Old IR35 rules, contractors will once again have to take responsibility for their status, and we expect the number of those workers seeking their own IR35 assessments to increase.</p> <p>Contractors will be well advised to remember that they should compile or maintain a 'file of evidence' supporting their status, in case of HMRC challenge.</p> <p>Given the significant extra volumes of information HMRC will have from April 2023 about how contractors worked during the New IR35 period, they need to be even more vigilant of risks to their status going forward than they were before.</p> <p>It's clear that immediately moving to an 'outside' assessment on the 6th April, on an assignment that the supply chain treated as 'inside', will be a high risk strategy</p>

How we can help you?

Workwell can support all parts of the supply chain with the upcoming changes.

Workwell Enterprise specialises in supply chain consultancy, helping end clients and agencies to understand how they can protect themselves against attack, both before, during and after the OPW rules apply.

Our trusted IR35 assessment tool, IR35 Complete is ready to assist supply chains and contractors achieve certainty in their status decisions.

The group includes an umbrella service and an accounting business to help workers whether as individuals or if operating as businesses in their own right. Both of these are accredited to the highest standards. We also have significant experience and expertise in construction, international contracting and back-office support services.

In summary, the compliance landscape post-April 2023 is not the same as it was before New IR35. New laws are in place that put more responsibility on the whole supply chain. HMRC has more information, and a 'test period' where some contractors changed their engagement model in response to legislation will inform their data analysis, and future compliance activity.

We're willing and able to help you navigate these uncharted waters.

About us

We have over 30 years' experience advising businesses, operating payroll and helping businesses succeed.

We can provide consultancy advice on managing a wide range of supply chain tax and legislative risks and we have a market-leading IR35 status determination platform, optimised for contractors, recruiters and end clients.



Talk to us

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If you would like to hear about how our umbrella service can assist during and after the changes, please contact Del.

Contractors

If contractors would like to hear about how our accounting services and IR35 assessments could help them, they should contact our team on 01923 257257 or email hello@workwellsolutions.com.

Appendix

Typical tax loading where the same budget is used to pay a contractor's own limited company vs funding an employee salary and employment costs.

Specific proportions of assignment rate allocated to different expenses / taxes will vary depending on individual circumstances. The splits shown are an indicative example only.

