

Contractor Communication



IR35 Reform - How will these changes impact you?

We trust that you will already be aware that HMRC have now announced that the implementation of tighter legislation surrounding IR35 in the Private Sector from April 2020 will go ahead as planned following the outcome of their review in February 2020, and we are just awaiting for the final legislation to be confirmed with the Budget on 11th March 2020.

These changes are being introduced to counteract the perceived beneficial tax treatment obtained by individuals engaged via their own Personal Service Company (“PSC”) who are considered disguised employees as if it wasn’t for their PSC, they would in fact be deemed to be under employment with the end-user of their services.

As AGR falls within the private sector and would be considered the “fee-payer”, we have taken steps to understand how these changes will impact both our contractors and our business in line with our clients to whom you provide services and would be considered the “end-user” under the legislation to date.

This communication has been prepared in conjunction with our professional advisors to give you some background to the steps that AGR have taken to date and to update you on where things stand.

Previous Legislation

Previously under IR35, where an individual engages with a Company through their own PSC, the responsibility to determine the individual’s status under IR35 lies with the PSC. Therefore, should the individual incorrectly determine that they are “outside” IR35, liability for underpaid income tax and employee and employer NIC lies with the PSC, along with any penalties and interest charged by HMRC.

In line with this, we assume that to date you have considered your status in conjunction with your accountant and applied the correct treatment accordingly.

Despite this previous legislation clearly stating who is responsible for establishing the individual’s status and ensuring the correct tax and NIC is paid, HMRC claims that 90% of contractors caught by IR35 do not comply, creating a substantial shortfall in taxes paid. Albeit, HMRC have successfully won only 12 of the last 33 employment status cases in court which raises question surrounding this statement, but ultimately, the legislative changes have been brought about to deal with this perceived non-compliance.

Changes

The changes which HMRC are implementing from April 2020 will see a number of different changes, the key points being as follows.

- 1 Responsibility for determining whether an engagement falls within the IR35 regime will move from the worker’s PSC to the end-user, being the party who is benefiting from the works. (AGR’s client)
- 2 If a worker is considered “caught” by IR35, the responsibility for ensuring the correct tax and National Insurance is paid to HMRC on invoices moves from the PSC to the fee-payer, being the party who makes payment of the PSC invoices. (AGR in this case)
- 3 Tax and National Insurance for workers “caught” by the legislation will no longer be paid via Self-Assessment and instead will be withheld from the invoice value by the fee-payer and paid to HMRC under PAYE through payroll.



Changes (continued)

The changes surrounding the treatment of invoice values for tax and NIC will essentially result in the chargeable value being treated in the same way as employment income, which will not only see an increase in the tax and NIC payable by individual workers but will also see a significant increase in the costs to AGR of engaging with a PSC where they are “caught” by IR35 by way of additional Employer’s NIC liabilities, Apprenticeship Levy and administration costs.

We have included some FAQs to answer questions that may arise as a result of these changes.

Frequently Asked Questions

Q1.

When will the private sector changes happen?

HMRC have now announced the changes will come into play from April 2020. Despite the constant campaigning from contractors.

Therefore, AGR are now taking the proactive approach to dealing with the upcoming changes.

Q2.

I’m a small company, does that mean I am not affected?

HMRC’s exemption for small companies must be applied to the end-user and not the individual PSC or any agencies / other companies in the supply chain. If the end-user does not meet the criteria to be considered a small company, these changes will apply to all contactors carrying out work for them.

We are communicating with our end-users to understand where the small companies exemption applies and in such cases, the treatment of contractor invoices will remain as is. For our end-users who are not covered by the exemption, we will be communicating with them to ensure they have sufficient information to make the status determination required of individual contractors carrying out work for them. AGR will then have an obligation to apply tax and NIC to all invoice payments made to individuals deemed to be “caught” by IR35 following the end-client’s status determination.



Frequently Asked Questions (continued)

Q3.

Will this mean changes to contractor rates?

As AGR are the fee-payer, these changes will see additional liabilities due by way of employers NIC and Apprenticeship Levy on the value of contractor invoices paid. As a result, we will be discussing with our end-users the impact that these changes will have on us as a Company from a cash flow perspective and understanding their approach surrounding payment for contractors deemed as “caught” by IR35.

We will then carry out a review of the additional costs due and will discuss with you directly any renegotiations to rates as soon as possible.

Q4.

What about historical liability?

While AGR trust that you have been compliant with IR35 to date, we appreciate that there is concern among contractors on where they stand should their status determination change come April 2020 and how HMRC will view prior years if they have considered themselves to be “outside” IR35.

HMRC have publicly stated that the changes are not retrospective and any change in status from April 2020 will not automatically trigger an enquiry being opened into earlier years unless fraud or criminal behavior can be determined. However we cannot assume that HMRC will not take any action to review prior years.

Should any enquiries be launched by HMRC, individual PSCs will remain liable for any underpaid tax, NIC and penalties on their position pre April 2020.

Q5.

Doesn't HMRC's Check Employment Status for Tax determine the position of a contractors engagement under IR35?

Although HMRC have created the CEST tool, this has been widely condemned as being unable to give accurate results due to the lack of information it looks for to return a status determination.

Given that in order to fully establish an individual's status under IR35, not only must the written contract be reviewed, but also what actually happens in practice, AGR will be urging our end-users to not rely upon HMRC's CEST tool and instead individual reviews should be carried out allowing for more accurate determinations to be arrived at, minimising the risk for AGR in the case of an incorrect determination and ensuring fairness for the PSC.

**Q6.***Will I move to a PAYE role?*

We are in discussions with our client's and whilst we would hope PSCs can still be utilized, we are aware that some are insisting on PAYE personnel only. If that is the case, then we will make you aware of the position and the terms being offered in order that you can make a decision on the opportunity being offered.

We trust that this communication has provided you with answers to some questions surrounding the changes in IR35 and how these changes will be handled by AGR.

If you have any outstanding questions which have not been answered as part of this document, please do not hesitate to contact Mark Scott (mark.scott@agrl.co.uk) for further clarity. We will however ensure that contractors are kept informed regarding their own individual positions up to and following the introduction of these changes.