

How Public Sector Organisations need to prepare for the IR35 Reform

News Article



The IR35 reforms from April 2017 require public sector organisations that hire contingent workers such as contractors to effectively evaluate their IR35 status and ensure compliance.

Failure to comply presents serious risks to your organisation: you could be face rate increases, claims for employment and workers' rights or see your highly skilled resources leave the public sector altogether.

Firms need to take action months before April 2017 to avoid spiralling costs and any loss of access to vital skills.

IR35 action plan for public sector organisations:

1. Acknowledge and address the major risks your organisation faces
2. Start testing IR35 status immediately, using independent solutions and experts
3. Work with contractors to help achieve IR35 compliance
4. Plan for the possibility that some contractors will leave
5. Be prepared to defend your decisions by collecting evidence of compliance.

Step 1 – Acknowledge the big risks

Rules in force from 6th April 2017 mean public sector hirers are responsible for evaluating the IR35 status of all limited company contractors that they engage. To do this, HMRC is strongly encouraging you to use its online Employment Status Service (ESS) tool to test contractors.

HMRC states that it will be bound by any decision determined by its tool, assuming the facts entered are accurate. This may suggest that using HMRC's tool is a risk-free solution. However, experts are predicting that the tool's criteria for passing IR35 will be too stringent, meaning the tool will fail many contractors who are legitimately outside IR35.

Contractors are aware of the tool's shortcomings, and aren't expected to settle for any judgement made by it. Instead they are likely to respond in one of three ways:

- Contractors forced inside IR35 will increase rates by 20%
- Some may claim workers' rights via the Agency Workers Regulations (AWR)
- Others on longer term projects may consider an Employment Appeals Tribunal to either claim rights, or disprove the evaluation
- Many could simply leave for more lucrative private sector contracts.

The fallout for your organisation is potentially disastrous, which is why you need to consider ensuring compliance independently, and conducting it many months before April 2017.

Step 2 – Start testing IR35 status now

Securing an independent evaluation gives you the best chance of reaching an accurate IR35 decision. This also reassures your contractors that you've taken the necessary measures to reach a fair as well as accurate assessment.

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In some instances, the next step would be an independent IR35 expert review, providing an objective evaluation and securing further evidence of due diligence. Expert IR35 reviews are available for around £125 - a cost that can be paid by your contractors.

Step 3 – Work with contractors to keep them outside IR35

An individual review will highlight any changes required to keep the contractor outside IR35. Any contractual changes required will reflect the reality of working arrangements, and strengthen the case that the contractor is outside IR35, minimising any risk to both the contractor and your organisation.

Step 4 – Plan for contractors leaving

Contractors will not want to remain in an ongoing contract that has suddenly changed from outside IR35 to inside IR35. Ask your contractors their plans if this happens and prepare for the consequences.

On top of the additional tax burden, the threat of a HMRC investigation targeting them for back taxes is too great. It's far more likely that they will do the following:

- Turn down the contract
- Move to the private sector where the reforms don't apply.

Step 5 – Be prepared to defend yourself

If HMRC decides at a later date that any contractor processed as outside IR35 should have been inside IR35, it will chase unpaid taxes, possibly from the organisation that makes the IR35 status decision, which means your firm could be liable.

This is why it's essential that you build up a body of evidence to prove that your contractors are outside IR35, should the taxman ever challenge you. Keep all reports and evidence to you support your decision.

If you are concerned about the tax risk of processing certain contractors as outside IR35, there are also various tax liability insurances available.

Don't do nothing – act now!

The reforms represent a potential car crash for all public sector firms that hire contractors, and the time to act is now!

Contractors are already considering a future outside your sector. You need to be doing all you can to keep them outside IR35, or else risk losing them and the vital skills they bring.

If you would like any advice or support regarding IR35 Legislation, please contact us.

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