

## IR35/THE OFF-PAYROLL RULES IN THE PRIVATE SECTOR

### The AAA Implementation Project

#### Why do I need to worry about this?

As a piece of legislation, IR35 has been around since 2000. In simple terms it says that if a contractor considers that he is inside of scope of IR35 he is technically employed, and or his intermediary/PSC must pay his employment taxes (PAYE) and National Insurance contributions (NICs) to HM Revenue and Customs (HMRC). If the contractor considers that he is outside of scope of IR35 he is self-employed, and he does not have to pay HMRC PAYE or NICs.

In a large part this has become a financial decision that the contractor has been making, based on the information he knows about the role, as remaining outside of IR35 nets a larger income. That's because the relevant rates of taxation for a PSC that pays its director/contractor a dividend income, is lower than paying PAYE and NICs.

In 2017 the legislation was altered in the public sector by what we often refer to as The Off-Payroll Rules, or the Intermediaries Legislation. The change meant that responsibility for deciding if IR35/The Off-Payroll Rules applied to an assignment moved from its current assessor (the contractor's PSC) to the end-user/Client; and liability for paying any PAYE or NICs arising from that decision was passed to the recruitment business, or other third party paying the intermediary.

This means that if the end-user/Client decides that the contractor is technically employed and inside IR35, whoever pays the contractor i.e.: the recruitment business or other third party is liable to pay HMRC the relevant PAYE and NICs.

It also means that if the decision that the contractor is outside of IR35 is the wrong decision, the recruitment business (or other third party who pays the contractor) could end up liable to pay PAYE and NICs to HMRC without any facility to pass that additional cost on, or claw it back from anyone.

In 2020 it is proposed that the 2017 legislation change in the public sector is extended to the private sector in the same way. If IR35/The Off-Payroll rules apply to the private sector as they currently do in the public sector, the liability for making the decision about the contractor's employment status and paying any resulting PAYE and NICs will move from the contractor and be split between the end-user Client and the recruitment business respectively.

The potentially tricky part for the recruitment business is that the decision about the contractor's employment status comes from the client, who has little or no financial liability if the decision is wrong. That liability will rest, for the most part, on the recruitment business.

It is possible that the size of the client will affect whether the Off-Payroll Rules apply, but we don't suggest you rely on this – or assume you won't be impacted.

## So what?

From a contractor's perspective being inside IR35 will reduce the value of an assignment by around 25 – 30% & potentially increase the costs of running a limited company business, without giving the contractor any of the employment rights enjoyed by an employee paying PAYE and NICs.

From a client's perspective, a contractor being inside IR35 could increase the costs of engagement by around 25%, and lead to a higher turnover of contractors which might delay or disrupt a project. Consequently a client may prefer not to use a contractor at all.

From a recruitment business' perspective, a contractor being inside IR35 could wipe out its profit margin and/or leave it with a liability to HMRC for unpaid PAYE & NICs. As it stands in the public sector, liabilities can only be passed back to the client where they have not considered the IR35 status of a role or provided supporting evidence. But ultimately the recruitment business as the paying party is liable if they do not apply the rules correctly.

## How can I deal with this?

Cognitive Law offers the following **AAA** service:

1. **Audit** all on-going roles, particularly if they are likely to run over 1st April 2020. Cognitive Law can provide an audit tool, to be completed by contractor &/or client as appropriate, and reviewed by the recruitment business. It splits out the criteria into the 3 primary areas used to determine whether a role is inside or outside of scope or IR35, and lists everything that will affect those criteria.

It is likely that some roles will definitely be outside of scope, some will definitely be inside of scope, and some will be on the cusp. Those that will definitely be outside must remain that way. Those that will definitely inside can be dropped or re-calculated. But it's the either way roles that need to be more closely examined in order to determine whether to conclude them or change them.

2. **Amend** all recruitment business' agency contracts to reflect the impending changes in order to protect the business going forward. Client contracts need to be amended to strengthen the client's responsibilities when assessing whether a role is inside or outside scope, and to give the recruitment business the facility to increase its charges if necessary. Contractor contracts need to be amended to strengthen the contractor's responsibility for ensuring a role remains outside or inside scope, and to give the recruitment business the facility to decrease the rates payable if necessary.
3. **Assimilate & train** internally to ensure all the Recruitment Business' consultants understand the implications of a role being inside or outside of scope of IR35. That way they can more easily determine whether a role is inside or outside, guide a client or contractor accordingly, and help safeguard the recruitment business' margins.

**If you think your recruitment business will be affected, please get in touch for an informal chat about how we can help. You can call us on 0333 400 4499 or email Lucy Tarrant at [lucy.tarrant@cognitivelaw.co.uk](mailto:lucy.tarrant@cognitivelaw.co.uk).**